146 U.S. 70

RECORD, CASE NO. 14848.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. ~~1374~~. 921

THE UNITED STATES, APPELLANT,

vs.

THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. MILLS AND GARRIT L. LANSING, TRUSTEES, AND JOSEPH E. YOUNGBLOOD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED SEPTEMBER 19, 1891.

RECORD, CASE NO. 14848.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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1 *Caption.*

In the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California.

THE UNITED STATES OF AMERICA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills, and Garrit L. Lansing, trustees, and Joseph E. Youngblood. } No. 178.

2 *Bill of complaint.*

In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA, plaintiff,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, the Southern Pacific Company of Kentucky, and Joseph E. Youngblood, defendants. } Bill in equity.

To the judges of the circuit court of the United States for the southern district of California:

The United States of America, by the Attorney-General thereof, brings this its bill against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of California; the Southern Pacific Company of Kentucky, a corporation organized and existing under the laws of Kentucky, and owning and operating a railroad in this judicial district, and Joseph E. Youngblood, a resident and a citizen of the State of California.

And thereupon your orator complains and says that the lands
3 hereinafter described, situate and being in Los Angeles County, California, were acquired by the United States of America from Mexico in 1846, and confirmed by treaty of Guadalupe Hidalgo in 1848, and were then, and at all times since have been, public land of the United States, not mineral, to which the United States have had full title, and have not been patented, reserved, sold, granted, appropriated, and have been free from all claims and rights and occupancy, except as affected by the acts of Congress and orders of withdrawals and routes of locations, as hereinafter fully set forth; said lands being described as follows, to wit:

Section 23, Tp. 4 north, range 15 west S. B. M.

Your orator further shows that, by act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company, in the State of California, every alternate section of public land, not mineral, to the amount of ten alternate sections of public land per mile on each side and along the line of route to be located by said company; and, by the same act of Congress, there

was, upon the same terms, limitations, and conditions, a similar grant made to the Southern Pacific Railroad Company, to aid in the construction of a line of road to San Francisco, a copy of the material parts of said act of Congress being hereto annexed and made a part hereof, marked Exhibit A.

4 Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant of July 27, 1866, on November 23, 1866, within the time and manner provided in said act, and did designate the line of its route by a plat thereof, which it filed in the office of the Commissioner of the General Land Office on or about March 12, 1872, and all the odd sections of public lands on each side of said road for thirty miles were then withdrawn from market and reserved from sale by executive orders.

Your orator further shows the court that, by section 23 of an act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," it was provided as follows:

"That, for the purpose of connecting the Texas & Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866."

"Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

5 Said Southern Pacific Railroad Company accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the Commissioner of the General Land Office, and did construct and complete said road in the manner and within the time prescribed, except that it did not connect with the Texas & Pacific Railroad; and on April 3, 1871, the odd sections of public land for thirty miles in width on each side of said route, to which the United States had full title, not reserved, sold, granted, appropriated, and free from all claims and rights, were, by the Department of the Interior, ordered withdrawn from sale and entry and reserved.

Your orator further shows that, by the act of Congress approved July 6, 1886, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast, and to restore the same to settlement, and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed, and restored to entry for noncompletion of that portion of said railroad to have been constructed in California.

Your orator further shows that the tracts of lands heretofore described lie and are situate in the county of Los Angeles and State of California, in odd-numbered sections, within ten miles of the route of the road of the

Southern Pacific Railroad Company, as shown by its designated route of location filed in the office of the Commissioner of the General Land
6 Office pursuant to said grant and act of Congress of March 3, 1871, and said lands are also within twenty miles of the line of road as designated and filed by the said Atlantic and Pacific Railroad Company in the office of the Commissioner of the General Land Office, under and pursuant to said grant of July 27, 1866, and are located in odd-numbered sections within the so-called primary limits of the latter-named railroad company, as designated and withdrawn by the Interior Department as aforesaid.

Your orator further shows that the United States, having the power and authority in that behalf, has elected, and does now elect, to hold, select, reserve, and set apart all the said tracts of lands before described herein as a part of said twenty sections per mile granted to said Atlantic and Pacific Railroad Company by said act of Congress of July 27, 1866, and which were deducted and excluded from said grant to said Southern Pacific Railroad Company on account of said grant to said Atlantic and Pacific Railroad Company.

Your orator further shows that the route of the Southern Pacific Railroad Company, as designated by the plat thereof filed in the office of the Commissioner of the General Land Office, as aforesaid, and as located and constructed, is, and it was necessary that it should be, upon the same general line as that of the said Atlantic and Pacific Railroad Company, as designated by the plat thereof filed by said company, as aforesaid; and all the lands in suit herein are situated opposite to that portion of said routes which are upon the same general line.

7 Your orator alleges, upon information and belief, that the defendants herein claim an interest in said lands in suit herein, described as aforesaid, under and through said grant of March 3, 1871, to said Southern Pacific Railroad Company, and not otherwise; but the nature and extent of such claims are unknown to your orator, and your orator asks that defendants each answer fully disclosing the nature and extent thereof.

Your orator alleges that defendants and neither of them have any title or interest in or to said lands, legal or equitable, for that said lands to which defendants claim title were excepted, reserved from, and excluded from said grant of March 3, 1871, to said Southern Pacific Railroad Company, and are still owned by the plaintiff.

Your orator further alleges that the defendant, Joseph E. Youngblood, unlawfully claiming to own said lands, and denying the plaintiff's right and title thereto, have, at many and divers times to your orator unknown during the past five years, unlawfully and without authority entered upon, cut, and removed from said land large quantities of wood and timber of great value, and which amount is unknown to your orator, but which it alleges, on information and belief, exceeds the value of $10,000.00.

Your orator further alleges that there are now on said land about 100 cords of wood which said defendants have so unlawfully cut therefrom, and are now wantonly and unlawfully cutting and destroying the natural timber on said lands without any license or authority, and to plaintiff's
8 great and irreparable injury; and said defendants are now removing from said lands the wood cut thereon, and are threatening to

remove all said wood, and cut and destroy the remaining trees on said land, and unless enjoined will do so to the irreparable injury of the plaintiff.

Your orator further shows the court that the matter in this suit exceeds the sum and value of $5,000.00, exclusive of interest and costs.

In tender consideration whereof and for as much as the plaintiff is remediless at and by the strict rules of the common law, and can only be relieved in a court of equity, your orator prays that its title to said lands may be quieted, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff, and your orator prays that the defendants each and their agents be forever enjoined from cutting any tree or wood upon said land, and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood or timber now cut thereon or hereafter cut thereon.

Your orator further prays for an accounting from the defendants and each of them and for the value of all said wood and timber cut and all the money and profit realized therefrom, and for such other and further relief as the court may deem equitable in the premises.

May it please your honors to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court di-
9 rected to defendants, The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, and Joseph E. Youngblood, enjoining them and each of them from asserting any right, claim, or title to said lands and from denying plaintiff's title thereto, and enjoining them each from cutting any tree or wood now on said land and from removing any wood or timber now cut on said land.

May it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, to be directed to The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, and to Joseph E. Youngblood, commanding them each on a certain day, and under a certain penalty therein to be inserted, to be and appear before your honors and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience; and your orator will ever pray.

Your orator expressly waives answer under oath by the defendants and each of them.

W. H. H. MILLER,
Attorney-General.
JOSEPH H. CALL,
Special Asst. U. S. Atty.
W. COLE,
United States Attorney, Southern District of California.

10 EXHIBIT A.

AN ACT granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, by the southern route.

SEC. 3. And be it further enacted, That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and tele-

graph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State; and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preëmption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office, and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preëmpted, or
11 otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: Provided, That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have heretofore been granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided further, That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: Provided further, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof, may be selected as above provided: And provided further, That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: And provided further, That no money shall be drawn from the Treasury of the United States to aid in the construction of the said "Atlantic and Pacific Railroad."

"SEC. 4. And be it further enacted, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles
12 of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report, under oath, to the President of the United States, and patents of land, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands, situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the

United States, then patents shall be issued to said company conveying the additional sections of lands as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid."

"SEC. 6. And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or preëmption, before or after they are surveyed except by
13 said company, as provided in this act, but the provisions of the act of September, 1841, granting preëmption rights and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May 20, 1862, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company."

"SEC. 9. And be it further enacted, That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same upon the further condition that if the said company make any breach of the conditions hereof and allow the same to continue for upwards of one year, then in such case at any time thereafter the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

"SEC. 11. And be it further enacted, That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other Government service, and also subject to such regulations as Congress may impose restricting the charges for such Government transportation."

"SEC. 12. And be it further enacted, That the acceptance of the terms, conditions, and impositions of this act by the said Atlantic and Pacific Railroad Company shall be signified in writing, under the corporate seal of said company duly executed, pursuant to the direction of its
14 board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act and not afterwards, and shall be deposited in the office of the Secretary of the Interior."

"SEC. 17. Be it further enacted, That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid, or assistance which may be granted to, or conferred on, said company by the Congress of the United States, by the legislature of any State, or by any corporation, person, or persons, or by any Indian tribe or nation, through whose reservation the road herein provided for may pass, and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid, or assistance to its own use for the purpose aforesaid: Provided, That any such grant or donation, power, aid, or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States."

"SEC. 18. And be it further enacted, That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State

of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations
15 herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

"SEC. 20. And be it further enacted, That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times, but particularly in time of war, the use and benefits of the same for postal, military, and other purposes, Congress may at any time, having due regard for the rights of said Atlantic and Pacific Railroad Company, add to, alter, amend, or repeal this act."

"Approved July 27, 1868."

(Endorsed:) No. 178. The United States of America vs. The Southern Pacific Railroad Company and others. Bill of complaint. Filed March 27th, 1890. Wm. M. Van Dyke, clerk.

16 *Subpœna for Joseph E. Youngblood.*

UNITED STATES OF AMERICA:

Circuit court of the United States, ninth circuit, southern district of California. In equity.

The President of the United States of America greeting, to Joseph E. Youngblood:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court room in Los Angeles, on the fifth day of May, A. D. 1890, to answer a bill of complaint exhibited against you in said court by the United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fourteenth.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

17 Memorandum pursuant to Rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of May next, at the clerk's office of said court, pursuant to said bill; otherwise the bill will be taken pro confesso.

WM. M. VAN DYKE, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
Southern district of California:

I hereby certify that I received the within writ on the 27th day of March, 1890, and personally served the same on the 20th day of April,

1890, by delivering to and leaving with Joseph E. Youngblood, said defendant named therein, personally, at the county of Los Angeles, in said district, a certified copy thereof.

GEORGE E. GARD,
U. S. Marshal,
By R. J. DOMINGUEZ,
Deputy.

Los Angeles, April 21*th*, 1890.

(Endorsed:) No. 178. U. S. circuit court, ninth circuit, southern district of California. In equity. The United States of America vs. The Southern Pacific Railroad Company et al. Subpœna. Filed April 21st, 1890. Wm. M. Van Dyke, clerk.

18 *Marshal's return.*

No. 178. U. S. circuit court, ninth circuit, southern district of California.

UNITED STATES OF AMERICA
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al. } Subpœna in equity.

I hereby certify that I received, on March 27, 1890, the subpœna in equity in the above-entitled cause, to be served on the Southern Pacific Railroad Company, and the Southern Pacific Company of Kentucky; and under instructions from J. H. Call, special United States attorney, I sent the above subpœna to Joseph D. Redding, attorney for said defendants, at San Francisco, to accept service on the same, and said Joseph D. Redding has not returned said subpœna in equity, and as the day for return has passed, I return said subpœna not served.

GEO. E. GARD, *Marshal.*
FRANK P. FLINT, *Deputy.*

(Endorsed:) 178. U. S. circuit court, south. district of California. United States vs. Southern Pacific Railroad Company et al. Return of subpœna ad res. Filed May 8th, 1890. Wm. M. Van Dyke, clerk.

19 *Amended bill of complaint.*

In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, defendants. } Amended bill in equity.

To the judges of the circuit court of the United States for the southern district of California:

The United States of America, by the Attorney-General thereof, brings this its amended bill against the Southern Pacific Railroad Company, a corporation organized and existing under and by virtue of the laws of the

State of California, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, citizens of the State of California, and thereupon your orator shows that the following-described land, situate in Los Angeles County, California, to wit, section 23, township 4 north, range 15, west, S. B. M., was acquired by the United States of America from Mexico in the year 1846 and confirmed by treaty of Guadalupe Hidalgo in 1848, and was then public land of the United States, not mineral.

20 Your orator further shows that by the act of Congress approved July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," Congress incorporated the Atlantic and Pacific Railroad Company and granted to said company in aid of the construction of such railroad a large amount of lands in the State of California and other States and Territories, and to which said act your orator refers. (See U. S. Statutes, Vol. 14, page 292.)

Section 3 of said act provides as follows:

"That there be and hereby is granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land not mineral designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated, by a plat

21 thereof filed in the office of the Commissioner of the General Land Office; and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers; provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the Unitrd States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act."

And sec. 18 provides as follows:

"SEC. 18. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road, and in consideration thereof, to aid in its construction, shall have similar grants of land subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations as to time and manner with the Atlantic and Pacific Railroad herein provided for."

22 Your orator further shows that said Atlantic and Pacific Railroad Company duly accepted said grant and proceeded to construct said road, and did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act, from Springfield, Missouri, by way of the points and places named in said act and in the time and manner provided in said act, to the Pacific Ocean, and on or about , 1866, did file such plat in the office of the Commissioner of the General Land Office, and which designation and location was approved by the Secretary of the Interior at that time; and all the odd sections of public lands on each side of said road for thirty miles were thereupon withdrawn from market and reserved from sale.

Your orator further shows the court that by section 23 of an act of Congress approved March 3, 1871 (see U. S. Stats., Vol. 16, p. 573), entitled "An act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas and Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to
23 said Southern Pacific Railroad Company of California by the act of July 27, 1866."

"Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

Said Southern Pacific Railroad Company, which then existed, accepted said grant, and on April 3, 1871, did designate the line of its said road by a plat thereof, which it on that day filed in the office of the Commissioner of the General Land Office.

Your orator further shows that by the act of Congress approved July 6, 1866, entitled "An act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast and to restore the same to settlement, and for other purposes," all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed, and restored to the public domain for noncompletion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

Your orator alleges that on December 2, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof approved May 20, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof
24 and other matters relating thereto, with the corporate name of the Southern Pacific Railroad Company." Said act is printed in the Statutes of California, 1861, at page 607, and to which said act your orator refers.

Said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning, and maintaining a railroad from some point on the bay of San Francisco, in the State of California, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego, in said State; thence eastward through said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

Your orator further shows that on October 11th, 1870, under and by virtue solely of the said general laws of the State of California authorizing two or more railroad companies to consolidate and amalgamate their capital stock, debts, property, assets, and franchises, said Southern Pacific Railroad Company, the San Francisco and San José Railroad Company, a railroad corporation then organized and existing under the laws of California, and the Santa Clara and Pajara Valley Railroad Company, also a railroad corporation then organized and existing under the laws of California, did, without any authority from the United States, agree, by a contract in writing, to consolidate and amalgamate their capital stock, debts, property, assets, and franchises, making a different capital,
25 issuing new stock, and creating a new and different corporation, under the name and style of the Southern Pacific Railroad Company, which contract was signed, published, and filed as provided by the laws of California.

Your orator further alleges that on the 12th day of August, 1873, under and by virtue solely of the law of the State of California of May 20, 1861, before referred to, authorizing the amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870 as aforesaid, and the Southern Pacific Branch Railroad Company, each organized and then existing railroad companies under and by virtue of the laws of California, did by a contract in writing, without authority from the United States, agree to amalgamate and consolidate their capital stock, debts, property, assets, and franchises, creating a new capital stock and issuing new certificates of stock and canceling the old ones, and creating a new and different corporation, by the name and style of the Southern Pacific Railroad Company, a copy of which new articles of association and incorporation are hereto attached, marked Exhibit AB, and did duly publish and file such new articles, as required by the laws of California.

And your orator alleges that the Southern Pacific Railroad Company, which was organized and created on August 12, 1873, by the said pretended articles of amalgamation and consolidatio of said several railroad companies as heretofore set forth, did construct and complete a railroad from Tehachapa Pass, by way of Los Angeles, to the Colorado River
26 in the manner and within the time prescribed in said act of Congress, in which the Southern Pacific Railroad Company therein named was authorized and empowered to do, and there was not, and is not now, any railroad or part thereof constructed or completed under said act or between said points otherwise than as aforesaid.

Your orator further shows that the general routes of said Atlantic and Pacific Railroad Company and of said Southern Pacific Railroad Company

under said act of March 3, 1871, as said routes were located as aforesaid, cross each other in the State of California.

Your orator further alleges that said lands in suit hereinbefore described are situated on the general line of the said designated route of the Atlantic & Pacific Railroad Company less than 20 miles therefrom, and are less than 20 miles from said designated route of said Southern Pacific Railroad Company, and in such overlapping limits on the general route of each of said lines of road.

Your orator further shows that said lands have never been granted, sold, served, occupied by homestead settlers, preëmpted, or otherwise disposed of by the United States, or by the Mexican or Spanish Governments, or any other government or authority, in whole or in part, or any estate or interest therein, otherwise than as set forth herein, and are not mineral lands.

Your orator alleges that said Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress
27 of March 3, 1871, did not build or construct any portion of said railroad.

Your orator alleges, upon information and belief, that the defendants herein have pretended conveyances executed in due form of law from said Southern Pacific Railroad Company, the corporation organized in the year 1870, as aforesaid, to which company said grant of March 3, 1871, was made, and from said Southern Pacific Railroad Company, organized on August 12, 1873, as aforesaid, purporting to sell and convey to them, the said defendants, the said land described as aforesaid.

Your orator alleges that defendants now claim to own said lands and deny the plaintiff's right and title thereto, and have been, during the past five years, at many and diverse times to your orator unknown, and are now wantonly and unlawfully cutting and destroying the natural timber on said lands without any license or authority, and to the plaintiff's great and irreparable injury. Your orator further shows that there is now on said lands a large amount of wood, which the defendants have unlawfully chopped from trees on said lands, and at diverse times during the past five years the defendants have entered upon said lands, chopped down the timber and trees thereon, then the property of your orator, carried away such timber, and used and converted the same to their own use, the amount and value of which is unknown to your orator; and are now removing from said lands wood cut thereon, and are threatening to chop down other trees on said land and remove all said wood, and unless enjoined will do so to the great and irreparable injury of the plaintiff.

28 Your orator further shows that the amount in controversy herein exceeds the sum or value of $5,000, exclusive of interest and costs.

Your orator alleges that by reason of the premises the defendants herein have surrendered and released to the United States all rights and franchises and lands, if they had any such, granted by said acts of Congress aforesaid, and which the plaintiff prays may be inforced as to the land in suit herein, without prejudice to other rights of the United States.

In tender consideration whereof, and forasmuch as the plaintiff is remediless at and by strict rules of the common law, and can only be relieved in a court of equity, your orator prays that its title to said lands may be quieted, and that the defendants and each of them be forever enjoined from asserting or claiming any right or title thereto adverse to the plaintiff;

and your orator prays that the defendants, each, and their agents be forever enjoined from cutting any tree or wood upon said land, and from in any way injuring the trees growing thereon, and from removing or causing to be removed from said land any wood or timber now cut thereon or hereafter cut thereon.

Your orator further prays for an accounting from the defendants for all wood sold by them and each of them, and for all the money and profit realized therefrom, and for such other and further relief as the court may deem equitable in the premises.

29 May it please your honors to grant unto your orator a writ of injunction issuing out of and under the seal of this honorable court, directed to defendants, The Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, enjoining them and each of them from asserting any right, claim, or title to said lands, and from denying plaintiff's title thereto, and enjoining them each from cutting any tree or wood now on said land, and from removing any wood or timber now cut on said land.

May it please your honors to grant unto your orator a writ of subpœna issuing out of and under the seal of this honorable court, to be directed to The Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, commanding them each, on a certain day and under a certain penalty therein to be inserted, to be and appear before your honors, and then and there answer the premises and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience, and your orator will ever pray.

Your orator waives answer under oath.

JOSEPH H. CALL,
Special Asst. U. S. Attorney, and of Counsel for Plaintiff.
WILLOUGHBY COLE.
United States Attorney,
Southern District of California.

30 EXHIBIT AB.

Articles of association, amalgamation, and consolidation, made and executed on this the twelfth day of August, A. D. 1873, by and between the Southern Pacific Railroad Company, of the first part, and the Southern Pacific Branch Railroad Company, of the second part:

Witnesseth: That whereas the said party of the first part 'eretofore, to-wit, on the eleventh day of October, A. D. 1870, was duly incorporated and organized under the laws of the State of California, by the amalgamation and consolidation of the following railroad corporations theretofore existing under the laws of said State, to wit: The San Francisco and San José Railroad Company, the Santa Clara and Pajaro Valley Railroad Company, the Southern Pacific Railroad Company, and the California Southern Railroad Company, pursuant to articles of amalgamation and consolidation of that date by them agreed upon, which articles were subsequently amended, to wit, on the eleventh day of April, A. D. 1871, by virtue of the laws of said State, whereby said corporation became duly incorporated and organized under the laws of said State for the purpose of purchasing, constructing, owning, maintaining, and operating a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo,

Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to some point on the Colorado River in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapi
31 Pass by way of Los Angeles to the Texas Pacific Railroad at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county and the counties of Santa Cruz and Monterey to a point at or near Salinas City, in said last-named county, a distance of forty-five miles, as near as may be; and also such branches to said lines as the board of directors of said corporation may consider advantageous to said corporation and direct to be established;

And whereas the said party of the second part was, heretofore, to wit, on the twenty-third day of December, A. D. 1872, duly incorporated and organized under the laws of the State of California, for the purpose of purchasing, constructing, owning, maintaining, and operating a railroad from a point on the Southern Pacific Railroad (the railroad of the party of the first part) at or near Salinas City, in the county of Monterey, southeasterly to a point in Kern County, South of Tulare Lake, intersecting the San Joaquin Valley division of the said Southern Pacific Railroad; also from a point on the above described line, at or near San Miguel, in San Louis Obispo County; thence in a southerly direction to a point of intersection, in Los Angeles County, with the line of the said Southern Pacific Railroad running from Tehachapi Pass by way of Los Angeles to Fort Yuma, said road passing into or through the counties of Monterey, San Louis Obispo, Kern, Santa Barbara, and Los Angeles, and said roads, in the aggregate, being, as near as may be, four hundred and twenty-eight miles in length;

32 And whereas said parties believe a consolidation *an* and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs, land, and franchises will be mutually advantageous;

And whereas more than three-fourths in value of all the stockholders in interest of each of said parties have consented, in writing, to such amalgamation and consolidation upon the terms and conditions hereinafter set forth:

Now, therefore, under and by virtue of the statute of the State of California in such case made and provided, the said parties do hereby mutually covenant and agree, each with the other, to the following articles, to wit:

ARTICLE FIRST. Said parties do hereby amalgamate and consolidate themselves into a new corporation, under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for a period of fifty years from the date of these articles;

And they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims, and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey, and vest the same in the said new corporation as fully as the same are now severally held and enjoyed by them respectively, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, judgments, claims, and charges thereon or in anywise affecting the same or any part thereof.

33 ARTICLE SECOND. The object and purpose of said new corporation shall be to purchase, construct, own, maintain, and operate the several lines of railroad hereinbefore described, to wit: a line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to some point on the Colorado River in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, passing through the counties of Los Angeles, San Bernardino, and San Diego, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in the same State, passing through said county and the counties of Santa Cruz and Monterey, to a point at or near Salinas City, in said last named county, a distance of forty-five miles, as near as may be; also a line of railroad from a point on the line thirdly above described, at or near Salinas City, county of Monterey, southeasterly through said county and into Kern County, to a point south of Tulare Lake, in said last-named county, intersecting at said point the line of railroad first above described, a distance of one hundred and eighty miles, as near as may be; also a line of railroad from a point on the last above-described line, at or near San Miguel, in the county of San Luis Obispo; thence in a southerly
34 direction through said county, the county of Santa Barbara, and into the county of Los Angeles, to a point of intersection with the line of railroad secondly above described, to wit, the line from Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, a distance of two hundred and forty miles, as near as may be; making in all fifteen hundred and nine miles, as near as may be, and such branches to said lines as the board of directors of said new corporation may hereafter from time to time establish.

ARTICLE THIRD. The board of directors of said new corporation shall consist of seven persons, and the following-named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: C. P. Huntington, D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, E. N. Miller, jr., and J. L. Willcutt.

ARTICLE FOURTH. The capital stock of said new corporation shall be ninety millions dollars, divided into nine hundred thousand shares of one hundred dollars each; that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

ARTICLE FIFTH. Each stockholder of each said parties shall have the same number of shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has
35 been fully paid up, upon the surrender of the certificates now held by him, and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct upon the surrender of such evidence of his ownership of such unpaid stock as he may now hold.

ARTICLE SIXTH. And the said several parties of the first and second parts, each for itself, hereby sell, assigns, transfers, grants, bargains, releases, and conveys to the said new and consolidated company and corporation, its successors and assigns forever, all its property, real, personal, and mixed of every kind and description; all its capital stock, all its interest in the shares of its capital stock subscribed but not fully paid for; all credits, effects, judgments, decrees, contracts, agreements, claims, dues, and demands of every kind and description, and all rights, privileges, and franchises, corporate and otherwise, held, owner or claimed by said parties of the first and second parts, or either of them, in possession or expectancy, either at law or in equity, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, incumbrances, claims, and charges thereon, or in any wise effecting the same.

ARTICLE SEVENTH. The said new and consolidated company and corporation is to be liable for and shall fulfil, perform, do, and pay all and each of the contracts and agreements, covenants, duties, obligations, liabilities, debts, dues, and demands of the said several parties of the first and second parts; but this amalgamation and consolidation shall
36 not in any way relieve the said parties of the first and second parts, or the stockholders thereof from any and all just liabilities.

In testimony whereof the said party of the first has caused this instrument to be signed by its vice-president (the president being absent) and its secretary, and its corporate seal to be thereunto affixed, and the said party of the second part has caused this instrument to be signed by its president and secretary, and its corporate seal thereunto affixed, in pursuance of orders and resolutions of their several boards of directors, made on the twelfth day of August, 1873.

SOUTHERN PACIFIC RAILROAD COMPANY,
[SEAL.] By DAVID D. COLTON, *Vice-President.*
J. L. WILLCUTT, *Secretary.*
SOUTHERN PACIFIC BRANCH RAILROAD COMPANY,
[SEAL.] By B. R. CROCKER, *President.*
By E. H. MILLER, Jr., *Secretary.*

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of said Southern Pacific Railroad Company, party of the first part, to the foregoing new articles of association, amalgamating and consolidating, the said parties of the first and second parts hereby consents to such amalgamation and consolidation and to the said new articles of association, this twelfth day of August, A. D. 1873.

37 LELAND STANFORD,
Contract and Finance Co.
Pr. W. E. BROWN, *Secy.*
MARK HOPKINS.
ROBERT ROBINSON.
S. T. GAGE.
CHAS. MAYNE.
DAVID D. COLTON.
J. L. WILLCUTT.
E. H. MILLER, Jr.

We, the undersigned, being the holders of stock to the extent of more than three-fourths of the value of all stockholders in interest of the said Southern Pacific Branch Railroad Company, party of the second part to the foregoing new articles of association, amalgamating and consolidating the said parties of the first part and second parts, hereby consents to such amalgamation and consolidation, and to the said new articles of association, this twelfth day of August, A. D. 1873.

LELAND STANFORD.
E. H. MILLER, Jr.
ALBERT GALLATIN.
MARK HOPKINS.
E. W. HOPKINS.
C. H. CUMMINGS.
B. R. CROCKER.

38 STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, W. C. Hendricks, secretary of the State of California, do hereby certify that I have carefully compared the annexed copy of articles of association, amalgamation, and consolidation between the Southern Pacific Railroad Co. and the Southern Pacific Branch Railroad Co., with the original now on file in my office, and that the same is a correct transcript therefrom and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the great seal of State, at office in Sacramento, California, the 5th day of September, A. D. 1889.

[SEAL.]

W. C. HENDRICKS,
Secretary of State.
By H. B. DAVIDSON,
Deputy.

(Endorsed:) No. 178. In U. S. circuit court, southern district of California. United States vs. Southern Pacific Railroad Company et al. Amended bill. Served on J. D. Redding, att'y for S. P. R. Co., & on Joseph Youngblood def'ts, by mail Apr. 14, 1890. J. H. Call, spec. ass't. U. S. att'y. Filed April 15th, 1890. Wm. M. Van Dyke, clerk. Joseph H. Call, sol. for pl'ff.

39 *Subpœna for D. O. Mills.*

UNITED STATES OF AMERICA.

Circuit court of the United States, ninth circuit, southern district of California. In equity.

The President of the United States of America, greeting, to D. O. Mills:

You are hereby commanded that you be and appear in said circuit court of the United States aforesaid, at the court room in Los Angeles, on the second day of June, A. D. 1890, to answer an amended bill of complaint, exhibited against you in said court by the United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty of five thousand dollars.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of April, in the year of our Lord one thousand eight hundred and ninety and of our Independence the one hundred and fourteenth.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

40 Memorandum pursuant to rule 12, Supreme Court, U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next, at the clerk's office of said court, pursuant to said amended bill; otherwise the said amended bill will be taken pro confesso.

WM. M. VAN DYKE, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
Southern District of California:

I hereby certify that I received the within writ on the 15th day of April, 1890, and after diligent search I am unable to find the within-named D. O. Mills in my district.

Los Angeles, May 5th, 1890.

GEO. E. GARD,
U. S. Marshal.
By FRANK P. FLINT,
Deputy.

(Endorsed:) No. 178. U. S. circuit court, ninth circuit, southern district of California. In equity. United States of America vs. The Southern Pacific Railroad Company et al. Subpœna. Filed May 8th, 1890. Wm. M. Van Dyke, clerk.

41 *Subpœna for G. L. Lansing.*

UNITED STATES OF AMERICA.

Circuit Court of the United States, ninth circuit, southern district of California. In equity.

The President of the United States of America, greeting, to Garrit L. Lansing:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court room in Los Angeles, on the second day of June, A. D. 1890, to answer an amended bill of complaint exhibited against you in said court by the United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 15th day of April, in the of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fourteenth.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

42 Memorandum pursuant to Rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit on or before the first Monday of June next, at the clerk's office of said court, pursuant to said amended bill; otherwise the said amended bill will be taken pro confesso.

WM. M. VAN DYKE, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
Southern District of California:

I hereby certify that I received the within writ on the 15th day of April, 1890, and after diligent search I am unable to find the within-named Garrit L. Lansing in my district.

GEO. E. GARD,
U. S. Marshal,
By FRANK P. FLINT,
Deputy.

Los Angeles, May 5th, 1890.

(Endorsed:) No. 178. U. S. circuit court, ninth circuit, southern district of California. In equity. United States of America vs. The Southern Pacific Railroad Company et als. Subpœna. Filed May 8th, 1890. Wm. M. Van Dyke, Clerk.

43 *Alias Subpœna.*

UNITED STATES OF AMERICA.

Circuit Court of the United States, ninth circuit, southern district of California. In equity.

The President of the United States of America, greeting, to the Southern Pacific Railroad Company:

You are hereby commanded, that you be and appear in said circuit court of the United States aforesaid, at the court room in Los Angeles, on the second day of June, A. D. 1890, to answer an amended bill of complaint exhibited against you in said court by the United States of America, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of May, in the year of our Lord one thousand eight hundred aud ninety, and of our Independence the one hundred and fourteenth.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

44 Memorandum pursuant to Rule 12, Supreme Court U. S.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of June next, at the clerk's office of said court, pursuant to said amended bill; otherwise the said amended bill will be taken pro confesso.

WM. M. VAN DYKE, *Clerk.*

UNITED STATES MARSHAL'S OFFICE,
Southern District of California:

I hereby certify that I received the within writ on the 8th day of May, 1890, and personally served the same on the 19th day of May, 1890, by delivering to and leaving with the Southern Pacific Railroad Company by delivering to & leaving with C. Cabot, managing agent of said company, and personally served the same on the 19th day of May, 1890, by delivering to and leaving with the Southern Pacific Railroad Company by delivering to and leaving with Charles F. Crocker, a director and managing agent of said company, and by delivering to and leaving with C. P. Huntington, a director and managing agent of said company, said defendant named therein, personally, at the county of Los Angeles, in said district, a certified copy thereof.

GEO. E. GARD,
U. S. Marshal,
By FRANK P. FLINT, *Deputy,*
And " M. F. TARBLE, "

Los Angeles, June 2nd, 1890.

45 (Endorsed:) No. 178. U. S. circuit court, ninth circuit, southern district of California. In equity. United States of America vs. The Southern Pacific Railroad Company et als. Alias subpœna. Filed June 5th, 1890. Wm. M. Van Dyke, Clerk.

46 *Order directing absent defendants to appear.*

At a stated term, to wit, the January term, A. D. 1890, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles, on Monday, the sixteenth day of June, in the year of our Lord one thousand eight hundred and ninety.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, defendants. } No. 178.

It appearing to the satisfaction of the court that D. O. Mills and Garrit L. Lansing, trustees, defendants in the above-entitled suit, are not citizens of the State of California and cannot be found therein, and are not inhabitants of and cannot be found in said southern district of California, and that neither of them will voluntarily appear to the amended bill of complaint of the complainants herein;

47 And it further appearing that this suit is brought to quiet the title of complainants to, and to enforce a claim to and to remove a cloud upon the title to real estate within said southern district of California, consisting of the land and claims of the complainants, in the said amended bill of complaint described, being the following-described

lands, situated in Los Angeles County, California, to wit: Section twenty-three (23), township four (4) north, range fifteen (15) west, San Bernardino base and meridian.

It is therefore ordered and directed that the following-named defendants, who are absent from, are not inhabitants of, and can not be found in, said southern district of California, viz: D. O. Mills, trustee, whose residence is to the complainants in the above-entitled amended bill unknown, and Garrit L. Lansing, trustee, whose residence is to the complainants in the above-entitled amended bill unknown, and each of them, do appear, plead, answer, or demur in said suit, by the fourth day of August, 1890, and that this order be served on each of said defendants, if practicable, wherever found, by delivering a copy thereof, certified to be a correct copy by the clerk, to each of said defendants, such service to be made by such persons as the solicitor of complainants may choose, and to be proved by the affidavit of any person serving the same; and that this order be also served upon the person or persons in possession or charge of said property, if any there be, in the same manner as upon said defendants; that is to say, by delivering a copy thereof, certified to be a correct copy by the clerk, to each of said persons, such service to be made also by such persons as the solicitor of complainants may choose, and to be proved by the affi-
48 davit of any person serving the same.

And it is further ordered that in case any of such absent defendants shall not appear, plead, answer, or demur within the time limited by this order, or within such further time as this court may allow, upon proof of said service of this order and of the performance of the directions herein contained, this court will entertain jurisdiction of said suit, and will proceed to the hearing and adjudication thereof in the same manner as if each of said absent defendants had been served with process within the said southern district of California; that said adjudication will, as regards said absent defendant or defendants who may not appear in said suit, affect only the property and rights which are the subject of said suit which are under the jurisdiction of this court.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of an original order made and entered by said court June 16th, 1890, in the cause entitled The United States of America, complainants, vs. The Southern Pacific Railroad Company et al., No. 178, and now remaining of record therein.

Attest my hand and the seal of said circuit court this 22nd day of June, A. D. 1891.

[SEAL.] WM. M. VAN DYKE,
Clerk.

49 (Endorsed:) No. 178. U. S. circuit court, so. dist. of California. The United States of America, complainants, vs. The Southern Pacific Railroad Company, et al., defendants. Certified copy of order directing absent defendants to appear. Filed June 22nd, 1891. Wm. M. Van Dyke, clerk.

50 *Answer to amended bill.*

In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA, complainants
vs.
THE SOUTHERN PACIFIC RAILROAD CO, D. O. Mills and Gerrit L. Lansing, trustees, and Joseph E. Youngblood, respondents.
No. 178.

Answer of the respondents.

Now come the respondents above named in the above-entitled cause, and for answer to the first amended bill in equity filed herein, and making answer to said bill and to so much thereof as they are advised is material, and now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as these respondents are advised is material or necessary for them to make answer unto, answering, say:

I.

51 The respondents allege that the Southern Pacific Railroad Company, one of the respondents herein, is a corporation organized and existing under the laws of the United States and the laws of the State of California.

II.

The respondents admit that the lands mentioned in said bill were acquired by the United States from the Republic of Mexico about the year 1846, said lands now being described according to the United States surveys as section twenty-three (23), in township four (4) north, of range fifteen (15) west, San Bernardino meridian, and that said lands were in the year 1848 public lands of the United States, not mineral.

III.

The respondents admit that by the act of Congress approved July 27, 1866, entitled, "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," Congress incorporated the Atlantic and Pacific Railroad Company, and granted to said company, in aid of the construction of such railroad and upon the terms and conditions in said act expressed but not otherwise, a large amount of lands, but respondents deny that by said act any grant of lands was made to the Atlantic & Pacific Railroad Company which attached to the surface of the earth in the State of California or took any lands in the State of California from out the public domain.

IV.

52 The respondents admit that said Atlantic & Pacific Railroad Company accepted said grant of July 27, 1866, within the time provided in said act, but the respondents deny that said company did designate the line of its route or did locate on the ground and designate upon a plat or map the whole of said line of railroad under said act; the respondents deny that the said company did locate on the ground or designate upon a plat or map the whole of said line of railroad under said act from Springfield, Missouri, by way of the points or places named in said act, or in the time and manner provided in said act to the Pacific Ocean, or to any points whatever; the respondents deny that said company ever lawfully located or designated any line of railroad in the State of California which it was authorized to locate, designate, or construct; the respondents deny that the Atlantic & Pacific Railroad Company did on the day of , 1866, or upon any date or dates, file such plat in the office of the Commissioner of the General Land Office; the respondents deny that said designation or location was approved by the Secretary of the Interior at that time or at all; the respondents deny that all or any of the odd sections of public lands on each side of said route for thirty miles were thereupon withdrawn from market or reserved from sale in anyway whatsoever.

V.

53 The respondents deny that the orders issued by the Commissioner of the General Land Office on or about March 12, 1872, or April 22, 1872, for the withdrawal of lands on the line of the Atlantic and Pacific Railroad, or any executive orders for withdrawal from market or reservation from sale of public lands for the benefit of the Atlantic and Pacific Railroad Company or under its grant, included the lands involved in this action. Said lands had theretofore been withdrawn for the Southern Pacific Railroad Company and neither said orders of March 12, 1872, or April 22, 1872, or any other executive orders for the benefit of the Atlantic and Pacific Railroad Company took effect upon the lands herein claimed by the complainant or any part thereof, because said lands had, by previous executive orders, been withdrawn for the benefit of the Southern Pacific Railroad Company, one of the respondents herein, and were expressly excepted from withdrawal orders to be made for the benefit of the said Atlantic and Pacific Railroad Company, and the respondents pray leave to refer to any executive order mentioned or referred to in the bill and the same may be produced herein for the precise purport and contents thereof. The respondents aver that the lands involved in this suit had previously, on the 3d of April, 1871, by the filing of the map of definite location of the Southern Pacific Railroad Company, one of the respondents herein, been duly reserved from sale by and under the said twenty-third section of the act of Congress of March 3, 1871, and the sixth section of the act of Congress of July 27, 1866; and allege also that said lands have been duly withdrawn from market and appropriated for the use of the Southern Pacific Railroad Company, one of the respondents herein, by the order of the Commissioner of the General Land Office to the register and receiver of the United States land office at Los Angeles, issued April 21, 1871.

54

VI.

The respondents admit that by section twenty-three of an act of Congress, approved March 3, 1871, U. S. Statutes, Volume 16, page 573, entitled, "An Act to incorporate the Texas and Pacific Railroad Company, and to aid in the construction of its road and for other purposes," it was provided as follows:

"That for the purpose of connecting the Texas & Pacific Railroad with the City of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants and privileges, and subject to the same limitations, restrictions and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July 27, 1866."

"Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic & Pacific Railroad Company, or any other railroad company." The respondents admit and allege that the said Southern Pacific Railroad Company which then existed, accepted said grant on April 3, 1871, and did designate the line of its said road by a plat thereof, which it, on that day, filed in the office of the Commissioner of the General Land Office.

VII.

55 The respondents further admit that by the act of Congress, approved July 6, 1886, entitled, "An Act to forfeit the lands granted to the Atlantic and Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific Coast, and to restore the same to settlement and for other purposes" all the lands and rights to lands in California theretofore granted and conferred upon said Atlantic and Pacific Railroad Company were forfeited, resumed and restored to the public domain for non-completion of that portion of said railroad to have been completed in California, no part of said road having been constructed in California.

VIII.

The respondents admit that on December 2, 1865, a corporation was organized, under the laws of the State of California, by the name and style of the Southern Pacific Railroad Company and under a general law thereof, approved May 20, 1861, entitled, "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof and other matters relating thereto, with the corporate name of the Southern Pacific Railroad Company." Said act is printed in the Statutes of California, 1861, at page 607; admit that said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation.

IX.

The respondents deny that on October 11, 1870, the Southern Pacific Railroad Company, the San Francisco and San José Railroad Company,

a railroad corporation then organized and existing under the laws
56 of California, and the Santa Clara and Pajaro Valley Railroad Company, by virtue solely of the said general laws of the State of California, authorizing two or more railroad companies to consolidate and amalgamate in their capital stock, debts, property, assets and franchises, did, without any authority from the United States, agree, by contract, in writing, to consolidate and amalgamate their capital stock, debts, property, assets and franchises; deny that by so doing they made a different capital or issued new stock and created a new and different corporation under the name and style of the Southern Pacific Railroad Company. The respondents allege that said Southern Pacific Railroad Company the San Francisco and San José Railroad Company and the Santa Clara and Pajaro Valley Railroad Company, did, on the 11th of October, 1870, enter into articles of amalgamation and consolidation, a copy of which articles is hereto attached and made a part of this answer and marked Respondents' Exhibit A; the respondents allege that said amalagamation was made with ample authority, both under the general and special laws of the State of California and under the sanction and authority and consent and ratification of the United States of America.

X.

Respondents deny that on the 12th of August, 1873, or upon any other date, under or by virtue solely of the law of the State of California of May 20, 1861, before referred to, authorizing amalgamation and consolidation of two or more railroad companies, the said Southern Pacific Railroad Company pretended to be organized in 1870, as aforesaid, or
57 the Southern Pacific Branch Railroad Company, or either of them, organized or then existing railroad companies under or by virtue of the laws of California, did, by a contract in writing, without authority from the United States, agree to amalgamate or consolidate their capital stock, or debts, or property, or assets, or franchises, creating a new capital stock, or issuing new certificates of stock or cancelling the old ones, or creating a new or different corporation by the name and style of the Southern Pacific Railroad Company; on the contrary, the respondents allege that on the 12th day of August, 1873, the Southern Pacific Railroad Company, one of the respondents, and the Southern Pacific Branch Railroad Company did enter into articles of incorporation and consolidation, a copy of which is attached to the bill, and the respondents refer to said articles of consolidation and the contents thereof for a proof as to what was done on said day. The respondents allege that said contract and agreement and consolidation were with the authority, consent, ratification and approval of the United States of America, and were within authority of law, and were entered into by virtue of the general and special laws of the State of California in that behalf provided. The respondents admit that all of the articles of amalgamation and consolidation referred to in said bill of complaint were duly published and filed as required by the laws of the State of California.

XI.

58 The respondents allege that the Southern Pacific Railroad Company, organized under the laws of the State of California in 1865, is one of the respondents herein, and is the same Southern Pacific Railroad Company as was mentioned in the act of Congress of July 27, 1866, above referred to, and is the same Southern Pacific Railroad Company as is mentioned in the articles of consolidation and amalgamation above referred to, dated, respectively, October 11, 1870, and August 12, 1873, and is the same Southern Pacific Railroad Company that is mentioned in the act of Congress of March ', 1871, above referred to. The respondents allege that the United States of America, by said act of Congress, duly recognized the said Southern Pacific Railroad Company and the contracts of amalgamation and consolidation entered into as above recited and duly ratified the same. The respondents allege that the said Southern Pacific Railroad Company is the same Southern Pacific Railroad Company to-day now sued upon as one of the respondents in this action, and is mentioned in all of the foregoing statutes and articles.

XII.

The respondents deny that the Southern Pacific Railroad Company, "which was organized or created on August 12, 1873, by the said pretended articles of amalgamation and consolidation of said several railroad companies as heretofore set forth," did construct and complete a railroad from Tehachapa Pass by way of Los Angeles to the Colorado River, in the manner and within the time prescribed in said act of Congress in which the Southern Pacific Railroad Company therein named was organized or empowered to do, and deny that there was not or is not now any
59 railroad or part thereof, constructed or completed under said act, or between said points otherwise than as aforesaid; the respondents allege that the Southern Pacific Railroad Company, one of the respondents herein, which is the same Southern Pacific Railroad Company that is mentioned in the act of Congress of July 27, 1866, and the act of Congress of March 3, 1871, and the articles of association and consolidation herein set forth, did construct and complete a railroad from Tehachapa Pass by way of Los Angeles to the Colorado River, in the manner and within the time prescribed in the said acts of Congress, and that the said railroad company has ever since been in running order and operating for the benefit of the United States and in accordance with all of the terms and conditions mentioned in said acts of Congress.

XIII.

The respondents deny that the general routes of the said Atlantic & Pacific Railroad Company and of the said Southern Pacific Railroad Company, under said act of March 31, 1871, as said routes were located as aforesaid, cross each other in the State of California in any way whatsoever or at all; the respondents deny that said lands in suit hereinbefore described are situated on the general line of the said designated route of the Atlantic & Pacific Railroad Company within any distance of said designated route or less than twenty miles therefrom; the respondents

allege that the Atlantic & Pacific Railroad Company never did designate its route in the State of California and never located its line in the State of California, in any manner whatsoever, but on the contrary,
60 wholly failed to do so; the respondents allege that the Atlantic & Pacific Railroad Company filed certain fragmentary maps of proposed route within the State of California, which are attached to this answer and made a part hereof and marked Respondents' Exhibit C; that said maps were filed on different dates and do not connect with each other and show an attempted location from the bay of San Francisco down the coast of California and thence through the State of California, as appears upon said maps to which reference is hereby made; that said maps were filed upon different dates in the Interior Department, to wit, on March 12, 1872, and April 16, 1874, and do not constitute a map or plat of definite location in accordance with the terms of the act of Congress of July 27, 1866. Your respondents show that said Atlantic & Pacific Railroad Company was authorized to construct a road and to receive a grant in the State of California, from the Colorado River at or near the thirty-fifth parallel of latitude, and thence by the most direct and eligible route to the Pacific Ocean; that said company never did locate its road in accordance with the terms of said act of Congress; that said maps heretofore mentioned, which were filed or attempted to be filed by said Atlantic & Pacific Railroad Company in the office of the Commissioner of the General Land Office, were in direct violation of the terms of the act of Congress and in a direction opposite to said terms and upon the surface of the earth of a portion of California never intended by said act of Congress to be built upon or constructed for railroad purposes by said Atlantic & Pacific Railroad Company.

61 XIV.

The respondents admit that said lands are less than twenty miles from the designated route of said Southern Pacific Railroad Company, but deny that said lands are in any overlapping limits on the general route of the line of any other railroad company or of the Atlantic and Pacific Railroad Company and the Southern Pacific Railroad Company. The respondents deny that there are any overlapping limits of any railroad company which affect said lands. The respondents allege that the said Atlantic & Pacific Railroad Company never did locate or designate its line in the State of California or create in any way or have any limits for the line of its road in the State of California; the respondents admit that said lands have never been preëmpted or disposed of by the Mexican or Spanish Governments or any other government or authority, but deny that said lands have never been granted, sold, reserved, or otherwise disposed of by the United States or any other government or authority in whole or in part, or any estate or interest therein, otherwise than as set forth in the bill of complaint, but on the contrary allege that said lands were granted to the Southern Pacific Railroad Company, one of the respondents herein, by the act of Congress of March 3, 1871, and allege that upon the filing of the map of definite location on April 3, 1871, which was done on that day, said lands were shown to be within the granted or twenty-mile limits of said grant to said Southern Pacific Railroad Company, and did become

on said day a part of the defined granted limits of said grant to
62 said company; and the respondents further allege that the railroad opposite to said lands was duly constructed and in operation in the time required by law.

XV.

The respondents admit that said lands are not mineral lands, but that the same are agricultural lands.

XVI.

The respondents deny that said Southern Pacific Railroad Company, to which corporation said grant was made by said act of Congress of March 3, 1871, did not build or construct any portion of said railroad, but, on the contrary, allege that it did construct the same and the whole thereof and is the same corporation mentioned in said act of Congress.

XVII.

The respondents allege that the Southern Pacific Railroad Company fully constructed and completed its road according to said acts of Congress, and the construction thereof has been accepted and approved by the President of the United States; that the construction of the last mile of said road was accepted by President Hayes on the 23rd of January, 1878; that commissioners duly appointed by the President made and filed their reports, and the same were accepted by the Secretary of the Interior and the President of the United States, and this action of the Secretary and President is binding upon the United States, and its validity can not be called in question in this cause.

XVIII.

63 The respondents allege that said Atlantic & Pacific Railroad Company's pretended line was not located or attempted to be located until long subsequent to April 3, 1871; that when sought or pretended to be located it was found to be on a wholly unauthorized route, not prescribed or permitted under any act of Congress in relation to or concerning said Atlantic & Pacific Railroad Company.

XIX.

The respondent Joseph E. Youngblood alleges that he purchased the land and premises involved in this cause from the Southern Pacific Railroad Company, paying a large sum of money therefor to the Southern Pacific Railroad Company; that said purchase was made in due form by a contract and deed in writing; that said respondent, Joseph E. Youngblood, purchased said land after the said Southern Pacific Railroad Company had constructed its road opposite to said land and after said road had been accepted by the President of the United States as duly and properly completed; that said purchase was made in good faith, and said respondent, Joseph E. Youngblood, has and is relying upon the repre-

sentations made by the United States and upon the conduct of the United States towards the respondent, the Southern Pacific Railroad Company, under said acts of Congress, and said respondnt declares himself to be an innocent and bona fide purchaser of said land and premises.

XX.

The respondents deny that they at any time have or are now wantonly or unlawfully cutting or destroying the natural timber on said lands without any license or authority or to the plaintiff's great or irreparable
64 injury or at all; the respondents deny that there is now on said lands a large amount of wood or any amount which the respondents have unlawfully chopped from off the trees on said lands; deny that at divers times or at all during the past five years or during any period of time that the respondents have unlawfully entered upon said lands or chopped down the timber or trees thereon which was the property of the complainant; deny that they have carried away such timber or used or converted the same to their own use; deny that they are now removing from said lands wood cut thereon or are threatening to chop down other trees on said land or to remove all of said wood; deny that unless enjoined they will do so to the great and irreparable injury of the complainant; on the contrary, the respondents allege that whatever they have done upon said land and premises has been done by virtue of their ownership therein and with full power and right in the premises and lawful; the respondents admit that the subject-matter in controversy in this action exceeds the amount of five thousand dollars ($5,000), exclusive of interest and costs of suit.

XXI.

The respondents deny that by reason of the premises or at all they have surrendered or released to the United States any or all rights or franchises or lands granted to them by said acts of Congress aforesaid, and deny that the complainant has any right of any nature to the lands in suit herein that should be enforced.

XXII.

65 These respondents deny that the United States had or has power or authority to elect, has elected, or does elect to hold, select, reserve, or set apart the tracts of land in the bill described as part of any lands granted to the Atlantic & Pacific Railroad Company by said act of Congress of July 27, 1866, and deny that said lands in the bill mentioned ever were, or have been or can be excluded or deducted from the lands granted to these respondents either on account of the grant to the said Atlantic and Pacific Railroad Company or for any other cause. The respondents deny that the Attorney-General of the United States or any other officer thereof has any right, power, or authority for the United States or on its behalf to designate, select, or claim said lands as lands granted to the Atlantic and Pacific Railroad Company.

XXIII.

The respondents deny that the route of the Southern Pacific Railroad Company, as designated by the plat thereof filed in the office of the Commissioner of the General Land Office, as aforesaid, and as located and constructed, is, and deny that it was necessary that it should be, upon the same general line as that of the said Atlantic and Pacific Railroad Company, as designated by the plat thereof filed, or alleged or pretended to have been filed, by said company, as aforesaid, and deny that all or any of the lands in suit herein are situated opposite to any portion of said routes which are upon the same general line. The respondent The Southern Pacific Railroad Company shows that the law of its grant required that its road should commence at Tehachapa Pass and extend to the
66 Texas Pacific Railroad near the Colorado River, and should go by way of Los Angeles. Tehachapa Pass is in Tp. 11 N., of range 12 W., San Bernardino meridian, and Los Angeles is in Tp. 1 S., R. 13 W., and the general course of the railroad from Tehachapa Pass to Los Angeles is nearly in a direct line from north to south. The Atlantic and Pacific Railroad, if it had been built, was to have extended from a crossing of the Colorado River near the 35th parallel of latitude to the Pacific Ocean. The point chosen for crossing the Colorado River by the Atlantic and Pacific Company is in latitude about 34° 40′ north.

The proposed or suggested location of the Atlantic and Pacific Railroad opposite the land in controversy extended from a point on the west boundary of Los Angeles County, in Tp. 4 N., R. 17 W., San Bernardino meridian, to a point in Tp. 7 N., R. 7 E., San Bernardino meridian, which is a line nearly east and west. The location of the Southern Pacific railroad is made as the law requires, from Tehachapa Pass to Los Angeles, on a line directly north and south, and the two lines cross at right angles and are not on the same generel route, and the land in controversy is not opposite a portion of the Southern Pacific Railroad, which is located upon the same general line as was proposed for the Atlantic and Pacific Railroad.

XXIV.

The respondent The Southern Pacific Railroad Company alleges that the land involved in this cause, viz, Section 23, in Tp. 4 N., of R. 15, San Bernardino meridian, lies within twenty miles of a part of the
67 Southern Pacific Railroad, located under the grant to said company by act of March 3, 1871, that was completed and accepted by the President of the United States, under said law, on the second day of March, 1877, and that the E. ½, the NE. ¼ of the NW. ¼, the E. ½ of the SW. ¼, and the SW. ¼ of the SW. ¼, amounting to 480 acres, of said section 23, were located by this respondent, the Southern Pacific Railroad Company, per list No 31 of the Los Angeles land office, as part of its grant under said acts of Congress of March 3, 1871, and July 27, 1866, long before the institution of this suit, viz, on the 28th day of April, 1885, at the United States land office at Los Angeles; and that on the 17th day of April, 1885, the cost of surveying the tracts on said list was paid into the Treasury of the United States according to the provis-

ion of the act of Congress of July 31, 1876 (19 Stat., p. 121), and on the 28th day of April, 1885, the location fees of the register and receiver were paid according to sec. 2238, Revised Statutes, and the said list No. 31 was transmitted by said officers to the Commissioner of the General Land Office at Washington City for a patent thereon to be issued to this respondent. On the 19th January, 1889, and prior to the institution of this suit, the estimated cost of writing and recording the patent on said list was paid into the Treasury of the United States, and that by reason of the grant of lands made by Congress to the respondent, and the location of the route of its road, and the full completion of the said road as provided by law, and by reason of the location of the lands in contest at the local land office, and of the payments of fees and costs as
68 above stated, the respondent The Southern Pacific Railroad Company had become and was the owner of the tracts located as aforesaid, and was and is entitled to a patent therefor from the United States, and that the United States had not any title or interest in said tracts at the time of the institution of this suit. The respondent has fulfilled all the conditions of its grant and all the laws and the regulations of the Department of the Interior prescribed as requirements antecedent to obtaining a patent. The register and receiver at Los Angeles were authorized by law to issue, and did, on the 28th day of April, 1885, issue, to the respondent a patent certificate, entitling the respondent to a patent of the United States for the lands described therein, and said certificate is now in full force and virtue. The respondent now produces and shows to the court a copy of the same, certified by the Commissioner of the General Land Office, and makes the same a part of this answer.

The respondents are informed and believe that the United States, on the 10th of February, A. D. 1883, issued a patent to one Thomas F. Mitchell for the W. ½ of the NW. ¼, the SE. ¼ of the NW. ¼, and the NW. ¼ of the SW. ¼ of said section 23, in Tp. 4 N., R. 15 W., San Bernardino meridian.

XXV.

The respondents deny that the lands in said section twenty-three, described in the patent certificate issued April 28, 1885, by the register and receiver at Los Angeles, were excepted, reserved, or excluded
69 from the grant by Congress of lands to this respondent by the act above mentioned, approved March 3, 1871, and denies that they are still owned by the complainant in this suit, or that the respondents have not title or interest in or to said lands.

Respondents deny that they or either of them have unlawfully cut or destroyed or removed, or are unlawfully cutting down, destroying, or removing, or threatening so to do, any trees, wood, or lumber, and deny having unlawfully committed, or intended unlawfully to commit, any injury whatsoever to said tracts.

XXVI.

The respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged without this, that any other matter, cause, or thing in the complainant's said bill of complaint contained, material or necessary for these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, trav-

ersed, avoided, or denied is true, to the knowledge or belief of these respondents; all of which matters and things these respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH D. REDDING,
Solicitor and of Counsel for Respondents.
CREED HAYMOND,
R.
Of Counsel for Respondents.

70 EXHIBIT A.

Articles of association, amalgamation, and consolidation, made and executed on this the 11th day of October, A. D. 1870, by and between the San Francisco and San José Railroad Company of the first part, the Santa Clara and Pajaro Valley Railroad Company of the second part, the Southern Pacific Railroad Company of the third part, and the California Southern Railroad Company of the fourth part, witnesseth:

That whereas the said party of the first part was heretofore, to wit, on the 18th day of August, 1860, duly incorporated and organized under the laws of the State of California, for the purpose of constructing, owning, maintaining, and operating a railroad from the city of San Francisco, in the county of San Francisco, in said State, through said county, and the counties of San Mateo and Santa Clara, to the city of San José, in said last-named county, a distance of forty-eight miles;

And whereas the said party of the second part was heretofore, to wit, on the 2nd day of January, 1868, duly incorporated and organized under the laws of said State for the purpose of constructing, owning, maintaining, and operating a railroad from a point at or near the city of San José, in the county of Santa Clara and State aforesaid, connecting at said point with the railroad of the said party of the first part, and to pass thence to a point at or near the town of New Gilroy, in the same county, a distance of thirty miles;

71 And whereas the said party of the third part was heretofore, to wit, on the 2nd day of December, 1865, duly incorporated and organized under the laws of said State, for the purpose of constructing, owning, maintaining, and operating a railroad from some point on the bay of San Francisco, in said State, and to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Kern, Los Angeles, and San Diego, to the town of San Diego, in said State; thence eastward through the county of San Diego to the eastern boundary line of said State, a distance of seven hundred and twenty miles, as near as may be, there to connect with a contemplated railroad from said eastern boundary line of said State to the Mississippi River, and has received large grants of land from the Government of the United States to aid it in the construction and equippment of said road. And whereas the said party of the fourth part was heretofore, to wit, on the 22nd day of January 1870, duly incorporated and organized under the laws of said State for the purpose of constructing, owning, and maintaining a railroad from a point at or near the town of Gilroy, in the county of Santa Clara, in said State,

and to pass through the counties of Santa Clara, Santa Cruz, and Monterey, to a point at or near the town of Salinas City, in said last-named county, a distance of forty-five miles, as near as may be;

And whereas said parties believe a consolidation and amalgamation of their capital stocks, debts, properties, assets, roads, telegraphs,
72 lands; and franchises will be mutually advantageous;

And whereas more than three-fourths in value of all the stockholders in the interest of each of said parties have consented in writing to such amalgamation and consolidation upon the terms and conditions hereinafter set forth:

Now, therefore, under and by virtue of the statute of the State of California in such cases made and provided, the said parties do hereby mutually covenant and agree each with each and all the others to the following articles, to wit:

ARTICLE 1. Said parties do hereby amalgamate and consolidate themselves into a new corporation under the name and style of the Southern Pacific Railroad Company, which new corporation shall continue in existence for the period of fifty years from the date of these articles; and they do further consolidate and amalgamate their several capital stocks, debts, properties, assets, roads, telegraphs, lands, franchises, rights, titles, privileges, claims, and demands of every kind whatsoever, as well in possession as in expectancy, at law or in equity, and do grant, convey, and vest the same in said new corporation as fully as the same are now severally held and enjoyed by them or either of them, subject, however, to all conditions, obligations, stipulations, contracts, agreements, liens, mortgages, encumbrances, claims, and charges thereon, or in anywise affecting the same.

ARTICLE 2. The object and purpose of said new corporation
73 shall be to purchase, construct, own, maintain, and operate a continuous line of railroad from the city of San Francisco, in the State of California, through the city and county of San Francisco, the counties of San Mateo, Santa Clara, Monterey, Fresno, Tulare, Kern, San Bernardino, and San Diego, to some point on the Colorado River in the southeastern part of the State of California, a distance of seven hundred and twenty miles, as near as may be; also a line of railroad from a point at or near Tehachapah Pass, by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be; also a line of railroad from the town of Gilroy, in the county of Santa Clara, in said State, passing through said county, and the counties of Santa Cruz and Monterey, to a point at or near Salinias City, in said last-named county, a distance of forty-five miles, as near as may be; also such branches to said lines as the board of directors of said new corporation may hereafter consider advantageous to said corporation and direct to be established.

ARTICLE 3. The board of directors of said new corporation shall consist of seven persons, and the following named persons shall act as such directors until their successors shall have been duly elected pursuant to the by-laws of said new corporation, hereafter to be adopted, viz: Lloyd Tevis, Leland Stanford, Charles Crocker, C. P. Huntington, Mark Hopkins, Charles Mayne, and Peter Donahue.

ARTICLE 4. The capital stock of said new corporation shall be
74 seventy million dollars, consisting of seven hundred thousand

shares of one hundred dollars each, that sum being the contemplated actual cost of said railroads, including telegraph lines, rolling stock, motive power, shops, depots, etc.

ARTICLE 5. Each stockholder of each of said party shall have the same number or shares of the capital stock of the new corporation which he now owns and holds of the capital stock of his respective company, upon the same terms and conditions, and shall be entitled to receive from said new corporation certificates therefor, where the same has been fully paid up, upon the surrender of the certificates now held by him; and where the same has not been fully paid up, he shall receive such other evidence of his ownership as the board of directors of said new corporation shall direct, upon the surrender of such evidence of his ownership of such unpaid stock of his respective company as he may now hold.

ARTICLE 6. Said new corporation shall assume and perform all the contracts, agreements, covenants, duties, and obligations of what kind soever, of each of said parties, and shall pay and discharge all debts, claims, and demands existing against either and all of said parties, but nothing herein contained shall release the said parties or either of them, or their stockholders, or any of them, from any of their just liabilities.

In testimony whereof the said Southern Pacific Railroad Company, by its board of directors, has caused these articles to be signed and
75 countersigned by its president and secretary and its corporate seal to be hereunto affixed, on this the eleventh (11th) day of April, 1871.

SOUTHERN PACIFIC RAILROAD COMPANY,
By CHARLES CROCKER, *President.*
[SEAL.] J. L. WILLCUTT, *Secretary.*

(Here follows map marked p. 76.)

77 (Endorsed:) No. 178. Circuit court of the United States, ninth circuit, southern district of California. United States of America vs. Southern Pacific Railroad Company et al. Answer. Filed August 4th, 1890. Wm. M. Van Dyke, clerk. Joseph D. Redding, solicitor for respondents, No. 8 Montgomery street, San Francisco, Cal.

78 *Replication.*

In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA, complainant, *vs.* THE SOUTHERN PACIFIC RAILROAD CO., and D. O. Mills and Gerrit L. Lansing, trustees, and Joseph E. Youngblood, respondents.	No. 178.

The replication of the United States of America, complainant, to the answer of the Southern Pacific Railroad Company, and D. O. Mills and Gerrit L. Lansing, trustees, and Joseph E. Youngblood, respondents.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer,

for replication thereunto saith, that it will aver and prove its said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual
79 in the law to be replied unto, confessed and avoided, traversed or denied, is true; all of which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly prays, as in and by its said bill it hath already prayed.

JOSEPH H. CALL,
Special Assistant United States Attorney,
Southern District of California.

(Endorsed:) No. 178. Circuit court of the United States, ninth circuit, southern district of California. The United States of America, complainant, vs. The Southern Pacific R. R. Co., D. O. Mills & Gerrit L. Lansing, trustees, and Joseph E. Youngblood, respondents. Replication. Served on J. D. Redding, solicitor for defendants, Aug. 6, 1890, by mail. Joseph H. Call, sol. for plff. Filed August 6th, 1890. Wm. M. Van Dyke, clerk. Joseph H. Call, sol. for plff.

80 *Enrollment.*

In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA, complainants, *vs.* THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, defendants. } No. 178.

The complainants filed their bill of complaint herein on the 27th day of March, 1890, against the Southern Pacific Railroad Company, the Southern Pacific Company of Kentucky, and Joseph E. Youngblood, which is hereto annexed.

A writ of subpœna to appear and answer the said bill of complaint was thereupon, on the 27th day of March, 1890, issued, at the request of complainants, separately for each of said defendants, The Southern Pacific Railroad Company, The Southern Pacific Company of Kentucky, and Joseph E. Youngblood, which said subpœnas were returnable on the 5th day of May, 1890; said subpœna for defendant Joseph E. Youngblood, with the marshal's return of service and the marshal's separate return as to the subpœnas directed to the defendants, The Southern Pacific Railroad Company and The Southern Pacific Company of Kentucky, are hereto annexed.

81 On the 15th day of April, 1890, the complainants filed their amended bill of complaint herein against the Southern Pacific Railroad Company, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, which is hereto annexed.

A writ of subpœna to appear and answer the said amended bill of complaint was thereupon, on said 15th day of April, 1890, issued at the request of complainants, separately for each of said defendants, D. O. Mills and Garrit L. Lansing, trustees, returnable on the 2nd day of June, 1890, which said subpœnas are hereto annexed.

An alias writ of subpœna, directed to the defendant The Southern Pacific Railroad Company, and requiring said defendant, The Southern Pacific Railroad Company, to appear and answer the said amended bill of complaint, was thereafter, on the 8th day of May, 1890, issued, returnable on the 2nd day of June, 1890, and is hereto annexed.

The defendant, The Southern Pacific Railroad Company, appeared herein on the 28th day of May, 1890, by Joseph D. Redding, esq., its solicitor.

On the 16th day of June, 1890, the court made and entered an order herein, directing the defendants, D. O. Mills, trustee, and Garrit L. Lansing, trustee, to appear, plead, answer, or demur in said suit by the 4th day of August, 1890, a copy of which order is hereto annexed.

The defendants, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, appeared herein on the 27th day of June,
82 1890, by Joseph D. Redding, esq., their solicitor.

On the 4th day of August, 1890, the answer of the defendants to the amended bill of complainants was filed herein and is hereto annexed.

On the 6th day of August, 1890, the replication of the complainants to the answer of defendants was filed herein and is hereto annexed.

Testimony was thereafter taken by the respective parties and filed in the clerk's office of the said circuit court.

On the 5th day of March, 1891, being a day in the January term, A. D.—1891, of the said circuit court present, the honorable Lorenzo Sawyer, circuit judge, and honorable Erskine M. Ross, district judge—the hearing of said cause before the court was had upon the pleadings and proofs, and on said 5th day of March, 1891, said cause was argued by counsel, and was submitted to the court for its consideration and decision upon said argument and upon briefs to be thereafter filed on behalf of the respective parties by counsel.

On the 18th day of May, 1891, the court made and entered an order herein that said cause be now finally submitted to this court for its consideration and decision.

On the 22nd day of June, 1891, the court made and entered an order herein that the complainants' amended bill of complaint be dismissed without costs.

On the 22nd day of June, 1891, a final decree, dismissing the said amended bill of complaint in accordance with the terms of said
83 order, was signed, filed, entered, and recorded herein, and is hereto annexed.

84 *Final Decree.*

UNITED STATES OF AMERICA.

Circuit court of the United States, ninth judicial circuit, Southern district of California. In equity.

THE UNITED STATES OF AMERICA, COMPLAINANTS,
vs
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Garrit L. Lansing, trustees, and Joseph E. Youngblood, defendants. } Decree.

This cause having heretofore been brought to a hearing upon the pleadings and proofs, and having been argued by Joseph H. Call, esq., special assistant United States attorney for the southern district of California, of counsel for the said complainants, and by Joseph D. Redding, esq., counsel for said defendants, and having thereupon been submitted to the court for its consideration and decision, and the court, after due deliberation thereon, having ordered that the complainants' amended bill of complaint herein be dismissed without costs,

It is therefore ordered, adjudged, and decreed that the said
85 amended bill of complaint of the said complainants The United States of America be, and the same is hereby, dismissed without costs.

Los Angeles, June 22nd, 1891.

Ross,
District Judge.

Decree entered and recorded June 22nd, 1891.
WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 178. U. S. circuit court, so. dist. of California. The United States of America, complainants, vs. The Southern Pacific Railroad Company et al, defendants. Final decree filed June 22nd, 1891. Wm. M. Van Dyke, clerk.

86 *Clerk's Certificate.*

Whereupon said bill of complaint, subpœna for defendant, Joseph E. Youngblood; marshal's return as to the subpœna directed to defendants The Southern Pacific Railroad Company and the Southern Pacific Company of Kentucky, amended bill of complaint, subpœna for defendant D. O. Mills, trustee; subpœna for defendant Garrit L. Lansing, trustee, alias subpœna; copy of order directing absent defendants to appear, answer of defendants to amended bill of complaint, replication of complainants, and final decree, are hereto annexed; said final decree being duly signed, filed, and enrolled, pursuant to the practice of said circuit court.

Attest, etc.,
[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 178. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. The United States of America vs. The Southern Pacific Railroad Company et al. Enrolled papers. Filed June 22nd, 1891. Wm. M. Van Dyke, clerk. Recorded decree. Register book No. 1, page 65.

87 *Opinion of circuit judge.*

In the circuit court of the United States, ninth judicial circuit, southern district of California.

UNITED STATES
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL. } No. 177.

and

UNITED STATES
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY ET AL. } No. 178.

SAWYER, circuit judge. These are suits brought against the Southern Pacific Railroad Company and parties who have purchased the land described and derived title thereto from the Southern Pacific Railroad Company, to determine the adverse claims of title to said lands and to restrain defendants from cutting timber thereon, or from hereafter setting up any claim of title to said lands.

The lands involved in suit No. 177 are sections 1, 11, and 13 of township 3, and section 35 of township 4 north, of range 15 west, San Bernardino meridian, and those in suit No. 178, section 23, township 4 north, range 15 west, same meridian.

These lands are claimed by defendants under the act of Congress of March 3, 1871, "to incorporate the Texas Pacific Railroad Co.,
88 and to aid in the construction of its road, and for other purposes" (16 Stat., 573). Section 23 of said act is as follows: "That for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July twenty-seven, eighteen hundred and sixty-six" (16 Stat., 579). Section 18 of the act conferring rights upon the Atlantic and Pacific Railroad, referred to in the section quoted, and conferring the rights under which the defendants claim, is in the following language: "That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point, near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road;

and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for." And the provision of the same act, made applicable to
89 the Southern Pacific Railroad Company, and granting it lands, putting it upon the same footing in all particulars with the Atlantic and Pacific Railroad Company incorporated by the same act, is as follows: "And be it further enacted, that there be and hereby is granted to the Atlantic and Pacific Railroad Company (substitute Southern Pacific Railroad Company), its successors, and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of
90 the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: Provided, that if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been herefore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act" (14 Stat., 294, Sec. 3). Substitute in this section the words, "the Southern Pacific Railroad Company," for the words "the Atlantic and Pacific Railroad Company," and we shall have the grant to the Southern Pacific Railroad Company both by the act of 1866 and the act of 1871. Soon after the passage of the said act of March 3, 1871, to wit: on April 3, 1871, the Southern Pacific Railroad Company, as it then existed, designated the line of its road from Tehachapa Pass, by way of Los Angeles, to Fort Yuma, on the Colorado River, which it on that day filed in the office of the Commissioner of the General Land Office, and thereby the grant under said act of Congress attached to all the odd sections of land, to which it could attach under the provisions of said act of Congress.

Afterwards, on the twelfth day of August, 1873, the said Southern Pacific Railroad, in all respects as authorized by the laws of the State of California, existing and in force before and at the time of the passage of said act of Congress of March 3, 1871, incorporating the Texas Pacific Railroad Company, amalgamated and consolidated with several smaller

companies, as shown by Exhibit AB, annexed to the bill of com-
91 plaint in these cases, the said consolidated company being called by the name of "Southern Pacific Railroad Company," a part of the object stated in said articles of amalgamation being to construct "a line of railroad from a point at or near Tehachapa Pass by way of Los Angeles, to the Texas Pacific Railroad, at or near the Colorado River, a distance of three hundred and twenty-four miles, as near as may be," in pursuance of said provisions granting the right so to build a railroad to the Southern Pacific Railroad Company as provided in said section 23, in said act, incorporating said Texas Pacific Railroad Company, hereinbefore cited, said company having been amalgamated and consolidated under the same name and style as the principal company so incorporated and amalagamated, viz: The Southern Pacific Railroad Company.

The said amalgamated and consolidated company afterwards built the said railroad along the line so hereinbefore designated from Tehachapa Pass by the way of Los Angeles to the Colorado River, and fully completed the same within the time, and in all respects, as required by said act of Congress; and the said several sections were examined from time to time, and reported upon to the President by commissioners appointed for the purpose, and the whole line accepted by the President. Ever since its completion and acceptance, the said road has performed to the satisfaction of the United States Government all the services, such as carrying the mails, transporting troops, supplies, etc., in all respects as required by the provisions of said act of Congress incorporating the Texas Pacific Railroad Company; and said services have been accepted by the United States.

92 The Atlantic and Pacific Railroad Company, on March 12, 1872, long subsequent to the definite location of the line of the Southern Pacific Line, and after it commenced building its road, filed in the office of the Secretary of the Interior—not in the office of the Commissioner of the General Land Office—two maps of portions of a line of road in the State of California. These were the first maps of any part of the contemplated road in California ever filed. These maps are found in stipulated exhibits, Nos. 4 to 26. Sometime subsequently the said company filed in the same office two other maps found in stipulated exhibits, Nos. 4 to 26. These are the only maps filed relating to the location of the California portion of the Atlantic and Pacific road. The Atlantic and Pacific Railroad Company never constructed any portion of the road authorized to be constructed by it in the State of California; and for failure to construct said road or any part of it, Congress, on July 6, 1886, passed an act declaring a forfeiture of all lands within the State of California before granted to it, to aid in the construction of the road (24 Stat., 123).

The line of the Atlantic and Pacific Railroad, as shown upon said maps filed in the office of the Secretary of the Interior, crosses the line of the Southern Pacific Railroad, as located by its map, and as constructed from Tehachapa Pass by the way of Los Angeles to the Colorado River, but said lines are not located along the same general route. The lands in contro-
versy lie within twenty miles of both of said lines as so located and
93 shown, where they cross each other. The said lands have been conveyed by the said Southern Pacific Railroad Company, respondent, which constructed its road as aforesaid, to the other respondents to this suit, and the title so conveyed is now vested in them.

The first point made by complainants is that the present Southern Pacific Railroad Company, which built the road after the amalgamation and consolidation with sundry smaller roads mentioned, under the same name as the old company, and professedly for the same purpose, made in pursuance of the statutes of the State of California authorizing such consolidation and amalgamation, which statutes were in force at the date of the Congressional grant in question, and prior to which consolidation the grant by Congress was made, and which road was to be built in accordance with the laws of the State of California is not the identical Southern Pacific Railroad Company to which the act referred and the grant was made, and therefore that the defendant took nothing under the act of Congress. This point is not new in this court, as it was fully considered and overruled in South. P. R. Co. vs. Poole et al., 12 Saw., 544–5. Again, the point was made and earnestly urged in the southern district of California, in U. S. vs. S. P. R. R. Co. and U. S. vs. The Colton Marble and Lime Co., and the district judge, in an able opinion, concurred in, on this point, by the circuit judge, thoroughly examined the point and overruled it, citing with approval also the case of U. S. vs. Poole, referred to, and affirming it. 14 Saw., 623 et seq. See also S. P. R. R. Co. vs. Orton, 6 Saw., 160. We shall adhere to the ruling made in these cases till
94 the point is otherwise determined by the Supreme Court.

It is earnestly urged on the part of the respondents that the filing in the office of the Secretary of the Interior of the fragmentary maps of the location of the line of the contemplated Atlantic and Pacific Road, and to points not authorized by the law, does not constitute a location of the line in such sense or legal form as to give any right whatever under the act to the Atlantic and Pacific Company, and that it in no way affects the action or rights of the Southern Pacific Company. For the purposes of this case, however, without deciding or discussing the matter, I shall assume that the filing of these maps in the office of the Secretary of the Interior instead of the Commissioner of the General Land Office to have been so far regular and in accordance with the law granting the rights contemplated to the company, since, upon the view I take upon the rights of the parties, and of the effect of the act forfeiting the grant to the Atlantic and Pacific Company, it will not be necessary to decide the point raised.

The only remaining question is, whether, in view of all the facts of the case, the clause in the provision of section 23 in the act of 1871, "that this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company," or any clause in the act of 1866, under the facts of the case, defeats the grant to the Southern Pacific Railroad Company to these lands, which lie within the primary limits of the grant. This
95 question did not arise in U. S. vs. S. P. R. R. Co. and U. S. vs. Colton Marble Co., 14 Saw., 650. It is now directly presented, however, and we address ourselves to its consideration and solution.

In my judgment neither the proviso to section 23 of the act of 1871 nor any provision of the act of 1866 defeats the title to the lands in question, in view of all the facts in the case.

That proviso is as follows: "Provided, however, that this section shall in no way affect or impair the rights, present or prospective, of the At-

lantic and Pacific Railroad Company or any other company." Now, what is the fair import of this language? What was the intent of Congress, in view of the important objects sought in making the grant to respondents, in adopting this peculiar language? It is not the language of exception from the grant of any lands that the Atlantic and Pacific Company might lay claim to without earning them under the statute. It is not the language of exception at all. On the contrary, it merely made the grant to defendant subordinate and subject to any rights that the Atlantic and Pacific Company may then have secured or might thereafter acquire under the law authorizing it to acquire lands by the performance of the acts prescribed.

Congress intended that the respondent should not interfere with any lands which that other company should lawfully earn. It simply intended to protect any rights that it should acquire by performing the required acts. What were "the rights, present or prospective, of the Atlantic and Pacific Railroad Company?" Their rights were to secure the
96 odd sections of land provided for along the line of the road they should build by actually building the road, and earning the lands by performing the acts required. Their rights were to earn the lands, and not to obtain them without earning them. Congress had nowhere provided or contemplated that this company should file a plat of a route for a railroad and then play the role of a dog in the manger, and neither build the road itself, and thereby earn the lands, nor allow the respondents to build one and earn the lands under another grant. The Atlantic and Pacific Company never did anything to earn these lands except to file what it was pleased to term a map of the location of its route six years after the date of the grant, and one year after the respondent had located its road under the grant made five years subsequently, and after it had commenced building the road; and for failure to comply with the terms of the grant by the Atlantic and Pacific Company. Congress, in 1886 (24 Stat., 123–24), passed an act forfeiting its right to earn these lands altogether. Thus its rights, "present" and "prospective," have never ripened into an effective grant, and now they never can so ripen. They now have and can have no further rights in these lands, whether the respondents get them or not. The building of its road by the respondents, and earning these lands, which the other party has itself failed to earn, and now never can earn, can in no possible way "affect or impair" any rights the other company now has or ever did have. And had that company built the road and earned the lands, the respondent would not have got them,
97 for that would have been to affect or impair its rights.

The present right of the Atlantic & Pacific Co. was to earn the lands by the performance of the required conditions, and the prospective rights, the right to have the lands when so earned. This is all there is of it, and it did neither. Now, the grant to the Southern Pacific Company, being subject and subordinate to those rights, could not in anyway or in any degree have affected or impaired them, because the Atlantic & Pacific Company, had it performed the conditions, would have taken the said land under the act. It utterly failed to perform the conditions, and all its rights have been forfeited, and now patenting of the lands to the Southern Pacific can not in anyway possible affect any of these rights which do not now exist. Thus the rights of the Atlantic & Pacific Company, pres-

ent or prospective, never could have been affected by the acts of the Southern Pacific, which only took the lands in case the other company did not. It seems to me that any other view is utterly untenable. The respondent was in the position that it was compelled to take its grant subordinate and subject to the prior grant. It only took what would not be required to satisfy the prior valid claim had the work been performed. The prior claimant failed to aquire any real right to the lands by earning them, and they were forfeited and left to the respondent to earn under its grant, and it has faithfully earned them without in the slightest degree "affecting or impairing any prior right," "present or prospective," and it now can not impair them. It seems to me that the respondent
98 is justly entitled to these lands under its grant. An exception from a grant is an entirely different matter from taking a grant subject to other claims or rights as is, manifestly, the case here. When the other claims are satisfied or lost, the grantee, subject to those rights, takes what is left. The proviso in section 23 of the act of 1871 seems to me clearly to prescribe all the limitations intended by Congress in that act to be put upon the grant to respondent. It is specific and clear on this point, and only intended to be subject to any rights that should be actually acquired and perfected under any prior act. The reference to the act of 1866 does not modify the provision in this particular section. It puts no restriction upon respondent not expressly put upon the Southern Pacific Company by the act of 1866, and that act, in the precise language used, taken literally or substantially, does not affect this point. In that act the Southern Pacific Company was put upon the precise footing with the Atlantic & Pacific Company. Both took under the same act upon equal terms. In the act of 1871 the Southern Pacific Company was put upon the same footing as the Southern Pacific Company was put by the act of 1866. The proviso in section 3 of the latter act is "That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line the amount of land heretofore granted shall be deducted from the amount granted by this act." The language is "have been heretofore granted;" that is to say, granted before the passage of the act of 1866, not the act of 1871.
99 The rights of the Southern Pacific Company, granted by section 18, were not affected by any act that should be thereafter passed, and the rights of the Southern Pacific Company under the act of 1871 are the same as those of the Southern Pacific Company under the act of 1866, and under this proviso are only affected by grants made prior to the passage of the act of 1866. To hold otherwise would be to change the language of the acts. But the line of the Southern Pacific road is not on the line of the "Atlantic and Pacific" route as designated on what is claimed to be its map of location. The two roads are not "upon the same general line;" they simply cross each other. But again: The fair construction of this proviso, and as it was intended by Congress, in view of the object sought, is that "lands that have heretofore been granted," and "the amount of land" to be deducted, means lands that have been effectively granted, and to which the title has passed, or shall effectively pass, out of the United States, and finally become effectively vested in the grantees upon the performance of the prescribed conditions. It does not

mean inchoate grants, that are not finally perfected—grants that become forfeited by failure to earn them by performing the prescribed conditions, or any of them. These do not ultimately become grants at all within the meaning of the act and intent of Congress. Congress was anxious to procure the construction of these great works, for military, mail-carrying, and other uses, and thereby also develop the resources of the country and make a market for the public lands. It contributed nothing, be-
100 cause it received double price for the even sections. In these provisions it was only solicitous to protect the vested rights of prior grantees in lands fairly earned in constructing works of a similar kind in pursuance of a similar policy. It did not seek by forfeitures to evade its obligations to subsequent roads, and thereby increase its own property at the expense of those who actually carry out the objects of the law and fairly earn the lands intended for them. We can not attribute any such unworthy purpose or motive to Congress. It, manifestly, intended that the subsequent grantees should take the odd sections, subject only to prior rights, and when the prior grants failed and finally became no grants, by reason of a failure to perform the conditions necessary to perfect the grant, and when no rights can possibly be further affected by the grant to the subsequent grantees, that the latter, upon complying with the terms of its grant, should have the lands not ultimately or effectually granted under the prior acts of Congress. Effective completed grants only are contemplated in this proviso.

Now, in my judgment, the case is clearly this and nothing more. The act of 1866 gave the Atlantic and Pacific Company the right to build a railroad, with a right of location within the provisions of the acts; to receive the odd sections of land along the general line of its route upon building the road as required, but upon no other conditions. The grantee did not for six years do anything to locate its road in the State of California or earn the grant. The act of 1871 was passed, making a similar grant to respondent, subject, however, to any prior rights of the other company.

101 Within a month it filed its map of location and immediately went to work and continued till it performed all the required conditions; had its road completed and accepted by the President, and earned its lands. By filing its map of definite location it acquired a right to the odd sections for the prescribed distance on each side of the road, subject only to be defeated by the Atlantic and Pacific Company, having an older grant, by filing its map of definite location and then performing the other conditions necessary to earn the lands. At the time of locating the Southern Pacific line there was nothing to indicate that the Atlantic and Pacific Company would ever move in the matter. A year afterward and six years after the date of its grant, the Atlantic and Pacific Company filed what is claimed to be its definite location; and by that act, if properly done, and not already too late, under the law, it acquired what? Not a perfect or complete title to the land, but at most a temporary, provisional title, with a right to build the road, earn the lands along its line, perfect its title, and defeat the right of the respondents to acquire the land. But it did nothing more and after waiting twenty years for it, without anything more being done, Congress passed the act referred to, forfeiting its grant, and the lands never were fully granted, never became granted within the

reasonable meaning of the act of Congress providing for deducting therefrom subsequent grants, and thereby the grant to respondents became effective and perfect, without in the slightest degree or "in any way" "affecting" or "impairing any right," "present or prospective," of
102 the Atlantic and Pacific Company or any other prior grantee. If this be not the true view of the case, then no lands could have been acquired by the respondents under its grant, and the act purporting to be a grant as to it was a dead letter, a mere illusion; for, if the acts mentioned, performed by the Atlantic and Pacific Company at that date, could utterly defeat the grant of these lands as to the respondents, any location respondents could have made could have been defeated by similar action and the thereafter nonaction of the Atlantic and Pacific Company, for it could subsequently locate upon the same line, in the same sense as that upon which respondents did locate, and in the same manner defeat the latter grant.

I am therefore of the opinion that the earning and acquiring of these lands by the respondents, under the conditions shown by the record, in no way affected or impaired the "rights present or prospective" of the Atlantic & Pacific Railroad Company or any other within the meaning of the act of Congress; and that these lands are not lands heretofore or at any time granted by the act of Congress in such sense as to require them to be deducted along the general line of the road or otherwise, within the meaning of the acts of Congress of 1866 and 1871, or of either of them.

Under the views expressed the amended bills must be dismissed, and it is so ordered without costs.

(Endorsed.) Nos. 177–178. U. S. Circuit Court so. dist. of California.
United States of America vs. The Southern Pacific Railroad Com-
103 pany et al. United States of America vs. The Southern Pacific Railroad Company et al. Opinion of Honorable Lorenzo Sawyer, circuit judge. Filed June 22nd, 1891. Wm. M. Van Dyke, clerk.

104 *Opinion of district judge.*

In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES
v.
SOUTHERN PACIFIC RAILROAD COMPANY. } No. 177.

UNITED STATES
v.
SOUTHERN PACIFIC RAILROAD COMPANY. } No. 178.

Ross, district judge: These cases have been argued and submitted together.

The suits are brought to quiet the complainant's alleged title to certain lands and to enjoin defendant from asserting or claiming any title thereto. The lands are claimed by the defendant by virtue of the act of Congress of March 3d, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" (16 U. S. Stat. 573). By the 23d section of that act it was provided as follows:

"That, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco, the Southern Pacific Railroad Company of

California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass,
105 by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, with the same rights, grants, and privileges and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California by the act of July 27, 1866: Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company."

The evidence in the case shows that the defendant company accepted this grant and on the 3d of April, 1871, filed in the office of the Commissioner of the General Land Office a plat showing the definite location of the road it was thereby authorized to build, and proceeded to build it and completed its construction to the satisfaction of the Government in January, 1878. It thereby earned the lands embraced by the grant to it. The point that the present Southern Pacific Railroad Company is not the same Southern Pacific Railroad Company to which the act of March 3d, 1871, applied, was decided against the Government in the recent cases of the United States v. S. P. R. Co. et al. and U. S. v. Colton Marble & Lime Co. et als., Fed. Rep. of May 19, 1891, p. 596. The reasons for so holding were given at length in the opinions then rendered and need not now be repeated.

It is admitted that the lands in controversy in the present suits are situate within 20 miles of the line of road so located and built by the Southern Pacific Company, but as they are also within 20 miles of the line that the Atlantic and Pacific Railroad Company, under the act of
106 Congress of July 27, 1866, designated for its road, it is earnestly contended on behalf of the Government that they are excluded from the grant to the Southern Pacific Company.

When the case of the United States *v.* Southern Pacific R. Co., and same *v.* Colton Marble and Lime Co. (39 Fed. Rep., 132) were before the court on demurrers to the bills—the lands then involved being within the indemnity limits of the Atlantic and Pacific grant and within the primary limits of that to the Southern Pacific Company—it was said, "had they been situated within 20 miles of the designated route of the Atlantic and Pacific Company they would clearly have fallen within the grant to that company, and consequently have been excluded from the subsequent grant to the Southern Pacific Company; for if the construction above put upon the act of July 27, 1866, be the correct one every alternate section of public land designated by odd numbers within 20 miles of the line of the road as definitely fixed would have passed to the Atlantic and Pacific Company as of the date of its grant." That, though obiter, would undoubtedly have been so had the Atlantic and Pacific Company earned the lands by building the road for which the grant was made. But is it true, where it appears that the road was not built and where the grant to the Atlantic and Pacific Company for that reason has been subsequently declared forfeited by Congress, is the question now involved and to be decided.

The grant to the Atlantic and Pacific Company was the prior grant, it having been made by the act of July 27, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line in
107 the States of Missouri and Arkansas to the Pacific coast." (14 U. S. Stat., 293.) By that act the Atlantic and Pacific Company

was authorized to construct a railroad "beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary of said State, and thence by the most eligible railroad route, as shall be determined by the said company, to a point on the Canadian River; thence to the town of Albuquerque, on the river Del Norte, and thence by way of the Agua Frio or other suitable pass to the head waters of the Colorado Chiuito, and thence along the 35th parallel of latitude as near as may be found most suitable for a railroad route to the Colorado River at such a point as may be selected by said company for crossing; thence by the most practicable and eligible route to the Pacific."

To aid in the construction of the road there was granted to the Atlantic and Pacific Company by the 3d section of the act every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten sections on each side of the road whenever it passes through a State "and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is designated by a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever, &c."

The Atlantic and Pacific Company did nothing towards locating its line of road in California until March 12th, 1872, and never did do
108 anything towards building it, in consequence of which Congress, in 1886, passed an act declaring its land grant forfeited. In the meantime, that is to say, March 3d, 1871, the grant under which the defendant company claims the lands in controversy was made. Those lands were at that date public lands of the United States, for it is not pretended that the Atlantic and Pacific Company designated the route of its road prior to March, 1872, and its grant, as has been seen, was only for such public lands designated by odd numbers and non-mineral in character as should fall within the designated limits, and be at the time the line of its road should be designated by a plat thereof filed in the office of the Commissioner of the General Land Office not reserved, sold, granted, or otherwise appropriated, and free from preëmption or other claims or rights. No valid reason, therefore, existed why Congress could not include the lands in controversy in the grant it made to the Southern Pacific Railroad Company. Did it do so?

The act of March 3d, 1871, refers to that of July 27, 1866, for the terms of the grant thereby made to the Southern Pacific Company to aid it in building a road from a point at or near Tehachapi Pass, by way of Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, for the purpose of connecting the Texas Pacific Railroad with the city of San Francisco. The grant was for ten odd numbered sections of public land, not mineral, on each side of the road. As has already been said, the lands in controversy here were at that time public lands of the United States. They are within 20 miles of the line of road the Southern
109 Pacific Company was by the act of March 3d, 1871, authorized to locate and build, and which it did locate and build, and which the Government accepted as having been built in compliance with the terms of that act and which it has since used for its own purposes. The lands in controversy are therefore within the primary limits of that grant and justly belong to the Southern Pacific Company, unless there be something in the act of March 3d, 1871, excluding them from the grant thereby

made to it. It is urged that such exclusion is effected by the concluding clause of the section making the grant, which is in these words: "Provided, however, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company, or any other railroad company."

It is plain that this clause is not in the form of an exception from the grant. Congress was, of course, aware of its previous grant to the Atlantic and Pacific Company of date July 27, 1866, and being desirous of making that to the Southern Pacific Company subordinate and subject to its previous grants, inserted the proviso that the grant to the Southern Pacific Company should "in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Company, or any other railroad company." This is by no means saying, nor is it equivalent to saying, that any public lands of the United States that would otherwise be embraced by the grant to the Southern Pacific Company should be excluded from that grant. It was not to reserve anything to the United States, but to protect the "present and prospective" rights of the Atlantic and
110 Pacific Company and any other railroad company to which Congress may have made grants of land, that the proviso was inserted. Had the line of road the Atlantic and Pacific Company was authorized to build by the act of July 27, 1866, been definitely located at the time of the grant to the Southern Pacific Company of March 3d, 1871, and had the Atlantic and Pacific Company thereafter built its road and thereby earned the lands covered by its grant, the lands in controversy would have gone to it without regard to the proviso in question; for its grant, which would have attached to such lands at the time of the definite location of the route of its road, would have been perfected by the building of the road and the title then perfected have related back to the date of the grant, July 27, 1866, and of course, have excluded any subsequent grant covering the same lands. But the Atlantic and Pacific Company had not designated the route of its road at the time of the grant to the Southern Pacific Company of March 3d, 1871. It might do so, however, thereafter, and might build the road it was authorized to build and thereby earn the lands embraced by the grant to it of July 27, 1866. It had a "present and prospective" right to do so. If it did both of those things, it would be entitled to the lands granted to it by that act. If it did not do both of those things, it would not be so entitled, and the lands would remain, as they then were, public lands of the United States. Congress, therefore, in making its grant to the Southern Pacific Company of March 3d, 1871, made it subject to those "present and prospective" rights. Had they been perfected by a compliance on the part of the Atlantic and Pacific Company
111 with the conditions on which they were based, the title to the lands in controversy would have become vested in the Atlantic and Pacific Company as of date July 27, 1866. But as that company never did comply with the conditions of the grant, and as all of its rights thereunder became forfeited in 1886 by act of Congress because of such noncompliance, there remain no rights of that company to be, or that ever can be, affected or impaired by the grant to the Southern Pacific Company of March 3d, 1871. The proviso to the 23d section of that act, in my opinion, was only intended to protect, and its scope went only to the protection of, the rights of the Atlantic and Pacific Company, and any other railroad company to which Congress had previously made a grant. It was

not intended to reserve to the United States any land that would otherwise be included in the granting clause of the act. The lands in controversy were public lands of the United States at the time of that grant; the terms of the granting clause include them, provided, only, that the grant be without prejudice to the present or prospective rights of the Atlantic and Pacific Railroad Company, or any other railroad company. The Atlantic and Pacific Company having forfeited its right to earn the lands in question by failing to build the road it was required to build as a consideration for the grant, it never acquired any title thereto, and thenceforwad there remained no right, "present or prospective," to be affected or impaired. When its rights become forfeited (there being no pretense that
112 the case is affected by the rights of any other railroad company than those herein spoken of), there came to an end the only condition imposed by Congress upon the grant to the Southern Pacific Company of March 3d, 1871.

These views render it unnecessary to determine the question elaborately and ably argued by counsel, as to whether there ever was a valid designation of the route of the proposed road of the Atlantic and Pacific Company.

I concur in the dismissal of the amended bill in each case, without costs, and wish to add that I would not have written this brief opinion had I known the circuit judge was engaged in the preparation of an opinion; but as each of us reached the same conclusion in a separate examination of the cases, at his suggestion both opinions are filed.

(Endorsed): Nos. 177 and 178. U. S. circuit court So. Dist. of California. United States vs. Southern Pacific Railroad Company, et al. United States vs. Southern Pacific Railroad Company, et al. Opinion of Hon. E. M. Ross, district judge. Filed June 22nd, 1891. Wm. M. Van Dyke, clerk.

113 *Examiner's report of testimony.*

In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills, Gerrit L. Lansing and Joseph E. Youngblood, defendants.
} No. 178. (Original testimony.)

114 *Stipulation.*

United States circutit court, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills, Gerrit L. Lansing and Joseph E. Youngblood, defendants.
} No. 178.

I.

It is stipulated that the testimony taken this day in case No. 177, entitled United States of America vs. Southern Pacific Railroad Company,

D. O. Mills and Gerrit L. Lansing, trustees, and the City Brick Company, Thomas Goss, Edward Simmons and Albert A. Hubbard, in the United States circuit court, southern district of California, shall be considered, and the same is hereby taken and considered as the testimony in this case, so far as the same is applicable, without further transcribing, and the court respectfully requested to refer to the testimony in case 177 above entitled, for the testimony in this case so far as the same is applicable; which said evidence is hereby introduced, subject to all the objections and motions therein mentioned.

115

II.

It is furthermore stipulated that the lands mentioned in this case, namely 178, were acquired by the United States from the Republic of Mexico about the year 1846, said lands being described according to the United States surveys as section 23 in township 4 north, of range 15 west, S. B. M., and that said lands were, in the year 1848, public lands of the United States, and not mineral lands but agricultural.

III.

The plaintiff dismisses this suit without prejudice as to the west one-half of the northwest one-quarter, the southeast quarter of the northwest quarter, and the northwest quarter of the southwest quarter, of section 23, in township 4 north, range 15 west, S. B. M.

IV.

It is furthermore stipulated that the subject-matter in controversy, and the lands in issue in this cause, are of the value of $5,001 and over, exclusive of interest and costs of suit.

V.

It is stipulated and agreed that all the testimony which has been and may be taken in this case, and all the admissions, shall be considered by the court subject to the objections and motions which have been
116 entered thereto, at the time of their introduction, and that such objections shall not be waived by either party by failure to file any exception to any master's report, nor by any formal motion to exclude such evidence.

VI.

It is stipulated and agreed that the foregoing evidence which has been taken, and the facts which have been admitted in this cause, shall be deemed to have been taken before the master in chancery of said court, and with the same effect as if it had been particularly introduced and transcribed by him, and that said master shall report the same to the court without transcribing it.

VII.

The plaintiff withdraws all claims for damages against the defendants for trespassing upon the land in suit, and for cutting timber on said lands, without prejudice to any right to recover such damages hereafter if it shall be found upon the final trial of this case that the lands in suit belong to the United States.

JOSEPH H. CALL,
Special Assistant United States Attorney.
JOSEPH D. REDDING,
Solicitor, Respondents.

AUG. 25, 1890.

117 *Proceedings and offer of Exhibits.*

LOS ANGELES, CALIFORNIA,
January 2nd, 1891 (10 o'clock a. m.).

(Case No. 178.)

The taking of testimony was resumed in pursuance of the order and notice hereunto annexed.

Present: Joseph D. Redding, by C. H. Wilson, esq., for respondents.

Examination continued until January 3rd, 1891, 10 o'clock a. m.

LOS ANGELES, CALIFORNIA,
January 3rd, 1891 (10 o'clock a. m.).

Present: Joseph D. Redding, by C. H. Wilson, esq., for respondents.

Examination continued until January 5th, 1891, 10 o'clock a. m.

LOS ANGELES, CALIFORNIA,
January 5th, 1891 (10 o'clock a. m.).

Present: Joseph H. Call, esq., for complainant; Joseph D. Redding, by C. H. Wilson, esq., for respondents.

Master's Exhibit 27, purporting to be a map showing the general
118 route of the Southern Pacific Railroad—branch line—under the act of March 3rd, 1871, from Tehachapa Pass, via Los Angeles, to the Texas Pacific at or near the Colorado River, was filed in evidence.

Master's Exhibit 37, purporting to be a map of the general route of the Southern Pacific Railroad from San Francisco, California, to the Colorado River, was filed in evidence.

It is admitted that upon filing the map, stipulated Master's Exhibit 37, hereinbefore referred to, the Secretary of the Interior did, on or about March 19th, 1867, address a letter to the Commissioner of the General Land Office, a certified copy of which said letter is herewith introduced in evidence and marked Master's Exhibit 38; that said letter was duly received on or about said day last aforesaid by the Commissioner of the General Land Office.

It is hereby stipulated and agreed that either party herein may at any time before the filing of the final brief in this suit produce and introduce in evidence any documentary evidence of a public or quasi-public nature,

and that the same so produced or introduced in evidence shall be entitled to full credit and consideration and be of the same force and effect as though the said evidence had been regularly and properly introduced within the time limited for the taking of testimony in this suit.

Mr. CALL. The deposition of J. L. Willcutt, on file in the case of the United States of America vs. The Southern Pacific Railroad, in
119 case No. 68, in this court, is introduced in evidence, and upon the clerk of the court filing a certified copy of the same, under the seal of the court, the original may be withdrawn pursuant to the order of court herein.

The EXAMINER. The certified copy referred to is filed in evidence and marked Master's Exhibit 39.

Mr. WILSON. Objected to by the respondents, upon the ground that the same is incompetent, irrelevant, and immaterial, and incumbers the record.

The deposition of J. L. Willcutt, taken herein, was opened and filed by the clerk and offered in evidence by the complainant and marked by the examiner Master's Exhibit 40.

Mr. WILSON. Objected to by the respondents, on the ground that the same is incompetent, irrelevant, and immaterial.

The deposition of Jerome Madden was opened and filed by the clerk of said court in the presence of the examiner, and offered in evidence by the respondents and marked by the examiner Master's Exhibit 41.

Mr. CALL. Objected to by the complainant, on the ground that the same is incompetent, irrelevant, and immaterial, and specifically as the objections therein appear.

Adjourned.

120 *Certificate of examiner.*

In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY ET al., defendants. } No. 178.

Be it remembered that on the 10th day of September, A. D. 1890, in pursuance of stipulations of counsel as therein set forth, the foregoing stipulations of fact were filed before me, Chas. L. Batcheller, standing master and examiner in chancery of said court, by Joseph H. Call, esq., counsel for complainant in said action, and that I now report the same to this court as a part of the testimony herein.

And I further certify that on the fifth day of January, 1891, in pursuance of the order and notice hereunto annexed, and in pursuance of various adjournments as therein set forth, the taking of testimony was resumed before me, Chas. L. Batcheller, master and examiner in chancery of said court, and that pages A, B, C, preceeding this certificate, consti-
121 tute a true and correct record of said proceedings, and that the Exhibits 27, 37, 38, 39, 40, and 41 were offered and filed and stipulations made by counsel for complainant and by counsel for respondents as therein set forth.

I further certify that I am not attorney nor of counsel for any of the parties to said cause, nor in any way interested in the event thereof.

In witness whereof I have hereunto set my hand this 10th day of January, A. D. 1891.

CHAS. L. BATCHELLER,
Master and Examiner in Chancery of said Court.

122 *Order and notice.*

In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES OF AMERICA
vs.
SOUTHERN PACIFIC RAILROAD COMPANY AND others. } No. 178.

On motion of Joseph H. Call, esquire, solicitor for complainant, it is hereby ordered that Friday, January 2, 1891, at ten o'clock in the forenoon, at my office rooms 23 and 24, number 232 North Main street, in the city of Los Angeles, in said district, before the undersigned, Chas. L. Batcheller, standing master and examiner in chancery of said court, be, and the same are hereby, fixed as the time and place for resuming the taking of testimony herein.

The parties and their solicitors will please take notice of the same.

CHAS. L. BATCHELLER,
Master and Examiner in Chancery.

Dated December 11th, 1890.

(Endorsed:) Filed January 10th, 1891. Wm. M. Van Dyke, clerk.

123 *Examiner's report of testimony in case No. 177.*

In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Gerrit L. Lansing, trustees, and the City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, defendants. } No. 177. Original testimony.

124 *Stipulation.*

Case 177 (U. S. v. S. P. R. R. Co. et als.)

SAN FRANCISCO, *Aug.* 25, 1890.

I have signed the within stipulated evidence on page 17 on the margin thereof, there being no room at the bottom—always subject to the various

exceptions taken by me, & furthermore it being understood that this stipulation of facts is not the final submission of the case, but put in to cover as much evidence as possible—including the exhibits hereto attached.

JOSEPH D. REDDING,
Solicitor Respondents.
JOS. H. CALL,
Special Asst. U. S. Atty.

It is furthermore agreed that the copies of original exhibits hereto attached shall have the same force & effect as originals, subject at all times to correction on inspection.

JOSEPH D. REDDING,
Solicitor Resp'd'ts.
JOSEPH H. CALL,
Special Asst. U. S. Atty.

125 *Index of exhibits.*

United States circuit court, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, ET al., defendants. } No. 177.

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127 *Stipulation.*

United States circuit court, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills and Gerrit L. Lansing, trustees, and the City Brick Company, Thomas Goss, Edward Simmons, and Albert A. Hubbard, defendants. } No. 177.

It is stipulated and agreed that the answer for all the defendants filed by Joseph D. Redding, as solicitor for the respondents, on August the 4th, 1890, shall stand as the answer of all the respondents in this case, and that

the answer of certain defendants and demurrer of certain defendants heretofore filed on the 7th of July by Chapman and Hendrick shall be withdrawn, always provided that, if said Chapman and Hendrick make any objection during the progress of this case to such withdrawal, they shall have the right to do so and to reinstate them.

Whereas most of the evidence in this case is of a documentary
128 character and are matters of quasi-public records, now, therefore, for the purpose of expediting and simplifying matters in the procedure of this cause, the following facts, hereinafter set forth, are stipulated by and between the respective parties to this cause and by and between their respective solicitors to be true, and the same by this stipulation shall be deemed to be introduced before the master in chancery of this honorable court, subject to the usual exceptions as to materiality, competency, and relevancy, which objections will appear in this stipulation as taken by counsel at the time each fact is herein stipulated to be true; and, further, that where a solicitor makes the same objection a number of times following each other the words "same objection" shall be deemed equivalent to the entire statement of the nature of the objection as set forth in the preceding objection.

I.

It is admitted as a fact that on December the 2nd, 1865, a corporation was organized under the laws of the State of California by the name and style of the Southern Pacific Railroad Company, and under a general law thereof, approved May the 20th, 1861, entitled "An act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," with the corporate name of the Southern Pacific Railroad Company. Said act is printed in the Statutes of California of 1861, at page 607.

129 II.

It is admitted that said corporation was formed for the purpose and with the corporate power, as stated in its articles of incorporation, of constructing, owning, and maintaining a railroad from some point on the bay of San Francisco, in the State of California, to pass through the counties of Santa Clara, Monterey, San Luis Obispo, Tulare, Los Angeles, and San Diego, to the town of San Diego, in said State; thence eastward through said county of San Diego to the eastern line of the State of California, there to connect with a contemplated railroad from the eastern line of the State of California to the Mississippi River.

Objected to by the respondents as irrelevant, immaterial, and incompetent, for the reason that the same has no bearing upon the issues of this case, and is without merit, and is sought to be introduced on the part of the plaintiff for the purpose of interfering with and incumbering the record and setting aside of matters which are res adjudicata.

III.

It is admitted that on the 11th day of October, 1870, the Southern Pacific Railroad Company, the San Francisco & San José Railroad Com-

pany, the Santa Clara & Pájaro Valley Railroad Company, with the California Southern Railroad Company, did enter into the following articles and contract, which are hereto annexed and marked Stipulated Exhibit I.

130 The same is on file in the case of the United States vs. Southern Pacific Railroad Company et al., consolidated numbers 67, 68, and 69, on the docket of the circuit court of the United States, southern district of California, and is marked Master's Exhibit, No. 124, and the same is herewith introduced in evidence in this case and marked Stipulated Exhibit I.

Objected to by respondents as being incompetent, irrelevant, and immaterial, in that Congress recognized the Southern Pacific Railroad Company, the respondent herein, subsequent to said articles of amalgamation and consolidation, namely on March the 3rd, 1871, and therefore the complainant has no right to introduce these articles in this cause.

IV.

It is admitted that on the 27th day of July, 1866, Congress passed an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line in the States of Missouri and Arkansas to the Pacific coast," found in the fourteenth volume of United States Statutes at Large, page 292, and the whole of said act is referred to by the respective parties to this cause.

V.

It is admitted that on the 24th day of November, 1866, the board of directors of the Southern Pacific Railroad Company, at a meeting held in San Francisco, in the State of California, on that day, passed a resolution

131 reciting the act next above referred to and resolved to accept the same, and did accept the same, and the terms, conditions, and impositions contained in said act, and accordingly, on the 30th day of November, 1866, the secretary of said company transmitted to the Secretary of the Interior a certified copy of said resolution of the board of directors, under the seal of the company, accepting the terms and conditions of said act of Congress of July 27th, 1866, which certified copy was on the 29th day of December, 1866, duly filed with the Secretary of the Interior, at Washington City, and within the time required by law.

VI.

It is admitted that on March the 1st, 1870, the legislature of the State of California passed an act "relating to certificates of incorporation," which act was approved on said date, and all the sections thereof are hereby referred to by the respective parties to this cause.

VII.

It is admitted that the lands mentioned in the bill of complaint on file herein were acquired by the United States from the Republic of Mexico about the year 1846, said lands now being described, according to the United States surveys, as all of sections 1, 11, and 13, township 3 north,

range 15 west, S. B. M., and section 35, township 4 north, range 15 west, S. B. M., and that said lands were, in the year 1848, public lands of the United States, and were and are agricultural lands; and that said
132 lands and the subject matter of this controversy exceed in value the sum of $5,001, exclusive of interest and costs of suit.

VIII.

It is admitted that on the 4th of April, 1870, the legislature of the State of California passed an act entitled "An act to aid in giving effect to an act of Congress relating to the Southern Pacific Railroad Company," and the said act and all the sections thereof are hereby referred to by the respective parties to this cause. Said act is found in Statutes of California of 1870, page 883, chapter 579.

(Objected to by the complainant as incompetent, immaterial, and irrelevant.)

IX.

It is admitted that the Southern Pacific Railroad Company, in pursuance and under authority of said enactment of the legislature of the State of California, approved March 1st, 1870, filed in the office of the secretary of state on the 15th day of April, A. D. 1871, amended articles of association, and the same are herewith introduced in evidence in this case and marked Stipulated Exhibit 2.

It is further admitted that all the provisions of the laws of the State of California were fully complied with in order to give effect to said new articles of association and said amendments.

133 (Plaintiff objects to the offer and introduction of this evidence as incompetent, immaterial, and irrelevant.)

X.

It is admitted that on the 12th day of August, 1873, under and by virtue of the laws of the State of California, the Southern Pacific Railroad Company, the Southern Pacific Branch Railroad Company, each organized as corporations under the laws of the State of California, did sign and file certain articles and contract, now introduced in evidence in this case, and which is in evidence in the case of the United States against Southern Pacific Railroad Company, consolidated numbers 67, 68, and 69 on the docket of the circuit court of the United States, southern district of California, and there marked Master's Exhibit No. 125, and the same is now introduced in evidence in this case and marked Stipulated Exhibit 3.

XI.

It is admitted that by and in pursuance to the act of Congress of July 27th, 1866, entitled "An act granting lands to aid in the construction of a railroad and telegraph line in the States of Missouri and Arkansas to the Pacific coast," the Atlantic & Pacific Railroad Company was duly created and organized, and, on the 23rd day of November, 1866, within the time and in the manner provided in said act, did accept the provisions of said act.

134 XII.

It is admitted that the Atlantic & Pacific Railroad Company filed in the office of the Secretary of the Interior certain maps and certified copies, of which, together with certain certified copies of letters from the General Land Office and from the office of the Secretary of the Interior, are now in evidence in consolidated cases 67, 68, and 69, above referred to, and known as Master's Exhibits 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 131, 127, and the map of railroad line between west boundary of Los Angeles County and San Miguel Mission, in California, which is a part of Master's Exhibit 131 in said case, also Ex. Nos. 126, 130, 128, 129, & 175; it being understood further that copies of said last enumerated exhibits shall be made and introduced in this case, marked Stipulated Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26.

These maps and certified copies of letters are offered in evidence by the plaintiff for the purpose of showing that the Atlantic & Pacific Railroad Company fully located and designated by a plat filed in the General Land Office its designated route of location from Springfield, Missouri, by way of the points named in the act of Congress of July 27th, 1866, within the time and in the manner prescribed by said act, fully designating the whole of such line, and which designation was approved by the United States through its proper officers.

135 The respondents object to these maps and letters offered as above, on the ground that the same are incompetent, immaterial, and irrelevant, in that they do not show that the Atlantic & Pacific Railroad Company located the line or route of its road by a plat thereof properly filed, but, on the contrary, show numerous fragmentary filings of disconnected, unsurveyed, problematical routes of road, in nowise conforming to the termini named in the act of Congress, nor showing an authorized road, but on the contrary an unauthorized series of fragmentary roads, disconnected, and covering territory not contemplated by the act.

XIII.

It is admitted that the said Atlantic & Pacific Railroad Company did construct and complete a portion of its road west of Springfield, Missouri, in the time and manner required by said act, but did not at any time construct or build any railroad west of the Colorado River or in the State of California.

XIV.

It is admitted that Congress, on July 6th, 1886, passed an act entitled "An act to forfeit the land granted to the Atlantic & Pacific Railroad Company to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast, and to restore the same to settlement, and for other purposes;" and that said act and all the sections thereof are hereby referred to and made a part of this

136 stipulation, and the same is found in the Statutes at Large, U. S., volume 24, page 123.

It is further admitted that thereby the lands and rights to lands in California theretofore granted and conferred, if any were granted and conferred, on the said Atlantic & Pacific Railroad Company, were forfeited.

XV.

It is admitted that on March the 3rd, 1871, Congress passed an act entitled "An act to incorporate the Texas & Pacific Railroad, to aid in the construction of its road and for other purposes," 16 U. S. Statutes at Large, 579. The whole of said act and all the sections thereof are hereby referred to and made a part of this stipulation.

XVI.

It is hereby stipulated that the Southern Pacific Railroad Company did, on April the 3rd, 1871, designate the line or route of its road by a map filed in the office of the Commissioner of the General Land Office on said day, which map is herewith introduced and marked "Stipulated Exhibit 27;" and it is furthermore shown that the lands in suit thereon are shown to be within the twenty mile or granted limits of said road as delineated upon said map; and furthermore, that upon filing said map, as aforesaid, the Commissioner of the General Land Office did address a letter to the register and receiver of Los Angeles, a copy of which said letter is herewith introduced, marked "Stipulated Exhibit 29." This letter was
137 received at the office of the Commissioner of the General Land Office on April 27th, 1867.

(Objected to by the plaintiff as incompetent, immaterial, and irrelevant, and for the further reason that the lands in suit herein were within the grant to the Atlantic & Pacific Railroad, as shown by its designated line of route, and were excepted from the grant to the Southern Pacific Railroad Company.)

The respondents move to strike out this objection on the ground that the same is impertinent and encumbers the record, in that no maps were filed locating the road or attempting to locate the road of the Atlantic & Pacific Railroad Company until 1872 and 1874, long after the definite location of the road of the Southern Pacific Railroad Company.

The solicitor for the complainant states that he has made the above admissions, only subject to the objections therein entered.

XVII.

It is admitted that on April 3d, 1871, the Secretary of the Interior transmitted to the Commissioner of the General Land Office a letter, and the same is here introduced and marked Stipulated Exhibit 29.

(Same objection.)

XVIII.

It is admitted that a railroad was built from Tehachapi Pass by
138 way of Los Angeles to the Colorado River at Fort Yuma, upon the line shown upon the map and designated route last above re-

ferred to, and was constructed and operated in the time prescribed by the act of Congress of March the 3rd, 1871, and is still being operated.

It is furthermore admitted that fifty miles of said road from its initial point near to Tehachapi Pass were completed and in running order on the 9th of May, 1874; that the next fifty miles were completed and in running order on the 11th of October, 1875; that the next fifty miles were completed and in running order on the 21st of July, 1876; that seventy-eight and fifty-one one-hundredths miles were completed and in running order on March the 3rd, 1877; and the next one hundred and eighteen miles were completed and in running order in January, 1878, completing said road to the Colorado River. That said road was built, equipped, completed, and in operation within the time prescribed for a railroad in said acts of July 25th, 1868, and of March the 3rd, 1871, which said act of July 25th, 1868, is entitled "An act to extend the time for the construction of the Southern Pacific Railroad in the State of California." The said act is printed in the fifteenth volume of the United States Statutes at Large, page 187; and the said act and all the sections thereof are hereby referred to and made a part of this stipulation.

XIX.

139 It is admitted that the Secretary of the Interior did address a letter to the President of the United States with reference to the Southern Pacific Railroad Company and telegraph line in California, dated "Department of the Interior, Washington, D. C., May 8th, 1874," and that the copy of the letter here introduced and marked "Stipulated Exhibit 30" is a true exemplification of the original, and the same is herewith admitted as a certified copy.

(Objected to by the plaintiff as incompetent, immaterial, and irrelevant, for the further reason that the lands in suit herein were excepted from any grant to the Southern Pacific Railroad Company by reason of being within the granted limits of the designated route of the Atlantic & Pacific Railroad Company; and for the further reason that the fifty miles of railroad constructed was not built under or in pursuance to the act of Congress of March 3rd, 1871.)

The respondents move to strike out this objection, on the ground that the same is impertinent and encumbers the record, in that no maps were filed locating the road or attempting to locate the road of the Atlantic & Pacific Railroad Company until 1872 and 1874, long after the definite location of the road of the Southern Pacific Railroad Company.

The solicitor for the complainant states that he has made the above admissions only subject to the objections therein entered.

XX.

140 It is hereby stipulated that the five examinations and reports were made and sent to the Secretary of the Interior by the commissioners appointed by the President to examine the construction of the Southern Pacific Railroad Company from Tehachapi by the way of Los Angeles to Fort Yuma, which five reports are herewith introduced and marked Stipulated Exhibits 31, 32, 33, 34, and 35.

(Plaintiff objects to each of said exhibits upon the grounds above mentioned, and does not admit that said railroad, or any part thereof, was constructed under said act of March 3rd, 1871, and objects to said exhibits and each of them upon the further ground that neither the President nor any of the commissioners appointed by him have any authority to accept any railroad as having been constructed which was not constructed according to law or under any act of Congress.)

XXI.

It is admitted that Congress, on June 28th, 1870, did pass a joint resolution, which is found in the sixteenth volume of the Statutes at Large, page 382, entitled "Joint resolution concerning the Southern Pacific Railroad of California." Said resolution and all the sections thereof are hereby referred to.

XXII.

It is admitted that Congress, on April the 20th, 1871, passed an act entitled "An act to enable the Atlantic & Pacific Railroad Company to mortgage its road." Said act is printed in 17 U. S. Statutes, page 19, to
141 which act reference is hereby made.

XXIII.

It is admitted that the testimony taken in cases consolidated numbers 67, 68, and 69, and which appears from page' 86 to 91, inclusive, shall be introduced in this cause to the same effect as if John E. Jackson had been sworn and testified to the same facts in this cause, subject to the objections made as therein set forth, which said testimony is marked Stipulated Exhibit 36.

The plaintiff objects to such evidence and every part thereof, on the ground the same is incompetent, immaterial, and irrelevant, and not the best evidence.

XXIV.

It is stipulated by and between the respective parties in this suit that the Southern Pacific Railroad Company accepted the conditions and terms contained in the act of July 27th, 1866, i. e., the Atlantic & Pacific act, and that said company did, on the 3rd of January, 1867, file in the office of the Commissioner of the General Land Office a map, which map is herewith introduced and marked Stipulated Exhibit 37.

SOLICITOR FOR COMPLAINANT.—I admit that the Southern Pacific Railroad Company accepted said grant at the time stated, but I do not admit that it filed a plat or map showing its designated route, nor that it had any right to designate its route upon the line shown by said map; but
142 I admit that at the time stated the Southern Pacific Railroad Company did offer to file its designated route of location as shown by said plat or map, which would have been legal and valid in all respects, provided the said company had a right to locate its route upon the line therein shown. I will admit that the map was offered to be filed, and was

endorsed filed by the Commissioner of the General Land Office, but I object to this evidence as incompetent, immaterial, and irrelevant, and upon the further ground that the Southern Pacific Railroad Company had provided in its articles of incorporation that it was incorporated for the purpose of constructing a railroad from the bay of San Francisco along down the coast and through the counties upon the Pacific coast of California, and that it had no authority of law to designate a line of route or to construct a railroad upon the line indicated upon said map.

XXV.

For the purpose of this case and for the purpose of determining the title to this land the plaintiff admits that the Southern Pacific Railroad Company prior to the year 1878, constructed and completed a railroad from the bay of San Francisco by the way of Tehachapi Pass to the Colorado River, at The Needles, within the time and in the manner prescribed in said act of July 27th, 1866, and the amendments thereto, in which it was provided that a railroad between said points be constructed and completed, and that said railroad is now in running order and being operated. But
143 the plaintiff objects to this evidence as incompetent, immaterial, and irrelevant, and upon the further grounds above stated.

XXVI.

It is stipulated and agreed that all the testimony which has been and may be taken in this case, and all the admissions, shall be considered by the court, subject to the objections and motions which have been entered thereto at the time of their introduction, and that such objections shall not be waived by either party by failure to file any exception to any master's report, nor by any formal motion to exclude such evidence.

XXVII.

It is stipulated and agreed that the foregoing evidence which has been taken and the facts which have been admitted in this cause shall be deemed to have been taken before the master in chancery of said court, and with the same effect as if it had been particularly introduced and transcribed by him, and that said master shall report the same to the court without transcribing it.

XXVIII.

The plaintiff withdraws all claims for damages against the respondents for trespassing upon the land in suit and for cutting timber on said lands, without prejudice to any right to recover such damages hereinafter if it shall be found upon the final trial of this case that the lands in suit belong to the United States.

JOSEPH H. CALL,
Special Asst. U. S. Atty.
JOSEPH D. REDDING,
Solicitor for Respondents.

[F. (4—207a.) M. N. W. C. E.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., September 10, 189[illegible].

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed map showing the general route of the Southern Pacific Railroad, branch line, under the act of March 3, 1871, from Tehachapa Pass, via Los Angeles, to the Texas Pacific Railroad at or near the Colorado River, is a true and literal exemplification of the original filed in the office of the Secretary of the Interior March 24, 1871, by Charles Crocker, esq., president of the company, and transmitted to this office with letter from the Secretary of the Interior bearing date April 3, 1871, ordering a withdrawal of lands for the benefit of said company.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

LEWIS A. GROFF,
Commissioner of General Land Office.

(14514 b—1m.)

(Here follows map, marked p. 345.)

[F. (4—207a.) M. N. W. C. E.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 3d, 1890.

I, W. M. Stone, Acting Commissioner of the General Land Office, do hereby certify that the annexed map of general route of the Southern Pacific Railroad from San Francisco, California, to the Colorado River is a true and literal exemplification of the original filed in the office of the Secretary of the Interior October 22, 1866, and received in this office January 3, 1867, with letter from the Secretary of the Interior bearing that date.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

W. M. STONE,
Acting Commissioner of General Land Office.

(14514 b—1m.)

(Here follows map, marked p. 347.)

348 EXHIBIT 38.

Rec'd in land office S. P. R. R. Co., Jan'y 18th, 1882. Jerome Madden, land agent.

[F. T. C. J. D. S.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
January 9, 1882

I, N. C. McFarland, Commissioner of the General Land Office, hereby certify that the annexed copy of letter to this office by the honorable Secretary of the Interior, dated March 19, 1867, is a true and literal exemplification of the original letter on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

N. C. McFARLAND,
Commissioner of General Land Office.

349 DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 19th, 1867.

SIR: Under date of January 3d, 1867, a map showing the designated route of the Southern Pacific Railroad in California, filed under the act of Congress approved July 27, 1866, was sent to you for appropriate action.

If a withdrawal of lands has not been ordered on account of said road, you will cause the necessary instructions to be issued to the local land officers to withhold the odd sections within the granted limits of twenty miles on each side of said road, as shown on the map before mentioned, and also withdraw the odd sections outside of the 20 miles and within thirty miles on each side, from which the indemnity for lands disposed of within the granted limits is to be taken.

The even sections within the twenty-mile limits will, under the act 3d March, 1853, "An act to extend preëmption rights to certain lands therein mentioned," be increased to $2.50 per acre and subject to the provisions of the preëmption and homestead laws at that price.

Mineral lands other than coal and iron are excluded from this grant.

I do not think it necessary at this time to pass upon the question as to whether this railroad company have adopted the route of any other railroad. Any identity of grant arising out of conflict of location under the first proviso in the 3d section of the act will be reserved for future consideration.

350 The withdrawal will be ordered to take effect upon the receipt of your instructions at the local office.

Very respectfully, your ob't servant,

O. H. BROWNING,
Secretary.

Hon. JOS. S. WILSON,
Commissioner of the General Land Office.

(Endorsed:) U. S. circuit court, south. dist. of Cal'a. Wood v. Carey, pl'ffs. Ex. E. Filed October 23rd, 1889. Wm. M. Van Dyke, clerk.

U. S. circuit court, southern dist. of Cal. United States of America vs. Southern Pacific Railroad et al. No. 177 & 178. Master's Exhibit (38). Filed Jan'y 5th, 1891. Chas. L. Batcheller, master and examiner in chancery. Filed January 10th, 1891. Wm. M. Van Dyke, clerk.

EXHIBIT 39.

351 In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, The Southern Pacific Company of Kentucky, Lewis H. Bixby, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, The Pomona Land and Water Company, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss, and Joseph Hinkell, defendants.

Nos. 67, 68, & 69, Consolidated by order of court.

Deposition of J. L. Willcutt. Clement Bennett, U. S. official reporter, 434 California street.

352 In the circuit court of the United States, ninth circuit, southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, The Southern Pacific Company of Kentucky, Lewis H. Bixby, H. J. Parks, Clara E. Cumberland, Thomas S. Oldham, O. Morgan, The Pomona Land and Water Company, L. L. Bradbury, H. M. Crampton, Carlton Seaves, Stoddard Jess, Elias Fink, Charles N. Peck, S. W. Moore, George D. Ripley, C. C. Johnson, William S. Henderson, Frank Johnson, George Rhores, Cassie L. Foss, and Joseph Hinkell, defendants.

Nos. 67, 68, & 69. Consolidated by order of court.

Wednesday, December 18, 1889. Before Charles L. Batchelor, master in chancery.

353 J. L. WILLCUTT, first being duly sworn on behalf of the plaintiff, deposes and says

(Mr. CALL.) Q. What is your occupation and residence?

A. Secretary of the Southern Pacific Railroad Company; residence, Oakland.

Q. Have you been secretary of the Southern Pacific Railroad Company since the 12th day of August, 1873?

A. Yes, sir; I have.

Q. Will you state is you were Secretary of any of the companies that have been amalgamated with the Southern Pacific Railroad Company, any of the companies names in the amalgamation of August 12th, 1873—the Southern Pacific Branch Railroad Company?

A. Yes; I was.

Q. The California Southern Railroad Company?

A. Yes, sir; I was secretary of that corporation.

Mr. REDDING. The respondent, The Southern Pacific Railroad Company, waives the evidence deduced from the answer of Mr. Willcutt on the ground that the information is secondary, and will concede that he is stating facts from the record as if the record itself spoke.

354 (Mr. CALL.) Q. Can you tell us what was the capital stock authorized of the Southern Pacific Branch Railroad Company, on the 12th day of August, 1873?

A. The capital stock I find to be twenty million dollars.

Q. Will you state what was the capital stock of the Southern Pacific Railroad Company prior to that amalgamation in August, 1873?

A. Seventy million of dollars.

Q. State what was the capital stock of the Southern Pacific Railroad Company as amalgamated with the Southern Pacific Branch Railroad Company by the articles of August 12, 1873?

A. Ninety million dollars.

Q. It is stated in article 6 of the articles entitled, "Article of amalgamation and consolidation," which is introduced in this case and marked, Stipulated Exhibit B, as follows: "And the said several parties of the first part and second parts each for itself hereby sells, assigns, transfers, grants, bargains, releases, and conveys to the said new and consolidated company and corporation, its successors and assigns forever all its property, real, personal, and mixed, of every kind and description, all its capital stock, all its interest in the shares of its capital stock subscribed but not fully paid for, all credits, effects, judgments, decrees, contracts, agreements, claims, dues, and demands of every kind and description, and all releases, privileges, franchises corporate and otherwise held, owned, claimed

355 by said parties of the first part and second parts or either of them in possession or expectancy either at law or in equity." Will you please state whether in carrying out this consolidation and amalgamation, any other or different assignment, or deeds, or transfers were made by either of the old companies to the new or consolidated company, which is there stated.

A. Not to my knowledge.

Q. Upon these articles referred to being executed, published, and filed, how did you proceed to carry on the business of the company with respect to the property of the Southern Pacific Branch Railroad Company and the Southern Pacific Railroad Company, as it existed prior to August 12th, 1873?

A. Exactly as though it had always been the property of the Southern Pacific Railroad Company proper. It carried on the business of both companies under the one name.

Q. Did the Southern Pacific Branch Railroad Company, as such, carry on any railroad business or otherwise as an independent corporation after the consolidation of 1873, referred to?

A. No, sir.

Q. Did the Southern Pacific Railroad Company, the party of the first part, to the agreement of August 12, 1873, referred to, being a corporation with a capital of seventy million dollars, carry on any railroad business or otherwise as such?

A. The business carried on continued in the name of the Southern Pacific Railroad Company, the amount of the capital stock not figuring in any of its transactions, conveyances, or otherwise.

356 Everything was done in the name of the Southern Pacific Railroad Company.

Q. Did any company by the name of the Southern Pacific Railroad Company having a capital of not more than seventy million dollars, do any railroad business or construct any railroad after the 12th day of August, 1873?

A. No, sir. The corporations consolidated after the date of the consolidation, or practically did so; they are not carrying on any business, it all being done under the name of the Southern Pacific Railroad Company.

Q. The companies or corporations which were parties to the contract entitled, "Articles of association, amalgamation, and consolidation of October 12, 1870," which are referred to in the evidence before the Master as Stipulated Exhibit A, were treated in the same way as being practically dead, or were they not? How were they treated?

A. As though they did not any longer exist, with the exception of the Southern Pacific Railroad.

Q. Now, will you please state, on conducting the affairs of the amalgamated company of October 12, 1870, whether or not you carried on the keeping of the books, and all other matters as a single company, and assumed that the property of the various companied were merged into one?

A. They were. The property of the different companies were transferred to a new set of books.

424 EXHIBIT 40.

In the circuit court of the United States, for the southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al., defendants.
} Two cases, Nos. 177 and 178.

Deposition of J. L. Willcutt, on behalf of plaintiff taken November 24th, 1890. Chas. T. Stanley, notary public and commissioner of deeds, Montgomery street, San Francisco, Cal.

425 In the circuit court of the United States, southern district of California.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, et al., defendants.
} Two cases, Nos. 177 and 178.

It is hereby stipulated and agreed by and between the respective parties to the above-entitled cause that the depositions and testimony of J. L. Willcutt and Jerome Madden and other witnesses in said cause be taken orally before Charles T. Stanley, a notary public, at his office No. 512 Montgomery street, San Francisco, or at such place as it may be adjourned to, on the 21st day of November, 1890, at 10 o'clock a. m., and continuing from time to time thereafter until completed; that the testimony may be written down in shorthand by a shorthand reporter, and thereafter written out in type-writing, and after being so written out in type-writing, may be read to and corrected by the witnesses; and that said depositions and testimony shall be taken, be read and used in evidence in said cause, with the same effect as if taken by an examiner pursuant to the laws of Congress and rules in equity of the Supreme Court, but without objection or ex-
426 ception to the time, place, or manner, of taking the same and the form of the question, unless noted at the time. It is furthermore stipulated that the time in which testimony may be taken by both parties shall be continued so as to include the rule day in January, 1891.

JOSEPH H. CALL,
Solicitor for Plaintiff.
JOSEPH D. REDDING,
Solicitor for Defendant, Southern Pacific Railroad Company.

Dated, San Francisco, the 21st day of November, 1890.

427 In the circuit court of the United States, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY ET al., defendants.
} Two cases, Nos. 177 and 178.

Be it remembered, that pursuant to the stipulation hereunto annexed, and pursuant to an adjournment had on the 21st day of November, A. D. 1890, continuing and adjourning the taking of the deposition herein until the 24th day of November, A. D. 1890, and on this 24th day of November, A. D. 1890, at the offices of the Southern Pacific Railroad Company, corner of Fourth and Townsend streets, in the city and county of San Francisco, State of California, to which place the taking of the deposition herein was adjourned from my office, No. 512 Montgomery street, in said city and county, before me, Chas. T. Stanley, a notary public in and for the said city and county of San Francisco, duly commissioned and sworn, and the person named in said stipulation, personally appeared J. L. Willcutt, a witness produced on behalf of the plaintiff in the above entitled

action, now pending in the said court, who, being by me first duly sworn and cautioned was then and there examined and interrogated by
428 Joseph L. Call, esq., solicitor for plaintiff, and Joseph D. Redding, esq., solicitor for defendant, The Southern Pacific Railroad Company, and said witness did then and there testify as follows hereinafter:

429 In the circuit court of the United States, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* SOUTHERN PACIFIC RAILROAD COMPANY ET al., defendants.	Two cases, Nos. 177 and 178.

(By agreement of counsel herein, the taking of the testimony under the annexed stipulation was adjourned from the office of Charles T. Stanley, notary public, at No. 512 Montgomery street, to the offices of the Southern Pacific Railroad Company, corner of Fourth and Townsend streets, in the city and county of San Francisco, California.)

J. L. WILLCUTT, a witness on behalf of the plaintiff, after being first duly sworn, testified as follows:

Direct-examination by Mr. CALL:

Q. 1. Where do you reside, Mr. Willcutt?

A. In Oakland.

Q. 2. Alameda County, California?

A. Alameda County.

430 Q. 3. What is your present official connection with the Southern Pacific Railroad Company?

A. Secretary of the company.

Q. 4. How long have you been secretary of that company?

A. Since 1870—October 4th, 1870, if you wish to be precise.

Q. 5. Have you as such secretary the custody and keeping of the records of the proceedings of the board of directors of the Southern Pacific Railroad Company?

A. Yes, sir.

Q. 6. Including in those records all the proceedings from August 12th, 1873, down to and including the proceedings of June 20th, 1877?

A. Yes, sir.

Q. 7. Have you also in your custody and keeping as such secretary the records of incorporation and consolidation of the Southern Pacific Railroad Company with various companies between those dates, inclusive?

Mr. REDDING. I object to the question on the ground that it is misleading and irrelevant and immaterial. It is misleading in that he asks the witness whether he has the articles of incorporation and consolidation for a certain year, thus giving to the mind of the witness the impression that the paper that the witness refers to as being in his keeping is an article of incorporation, when as a fact it is simply, as the witness desires to state, the articles of consolidation, not of incorporation. Let the witness now

answer the question. I will state now that if the witness
431 does not understand the nature of the objection, I desire my objection read to him before he answers the qu s on. Read the objection.

(The reporter reads the objection.)

Mr. REDDING. I object to the form of the question as misleading the witness into stating an affirmative answer to the question, when the question is simply directed to ascertaining what the paper is that the witness has in his custody.

Mr. CALL. Let the witness now answer the question, stating what he has got.

A. I have the various articles of incorporation and consolidation and amalgamation which have been entered into during the period referred to.

Q. 8. Have you the articles of consolidation entered into in the year 1873 between the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company?

A. I have.

Q. 9. Please produce them, in order that we can offer them in evidence.

(The articles referred to are now produced before the examiner, and it is stipulated that a certified copy shall be made by the examiner and offered in evidence in lieu of the original, and have the same effect as the original, at the expense of the Government.)

Mr. REDDING. The respondents object to the introduction of these articles as being incompetent, irrelevant, and immaterial in that
432 they refer to the proceedings of the company in consolidating with other railroads subsequent to the various land grants to the Southern Pacific Railroad Company made by Congress, and after Congress had recognized the former consolidations of the Southern Pacific Railroad Company of a similar nature with other companies.

(The certified copy is marked Plaintiff's Exhibit 21.)

(Mr. CALL.) Q. 10. Have you the original articles of consolidation and amalgamation entered into between the Southern Pacific Railroad Company and the San Pedro Railroad Company, dated in December, 1874?

A. I will say that the original copies are filed with the Secretary of State, but we have certified copies here.

Q. 11. You have certified copies?

A. Yes, sir; we have certified copies.

Q. 12. Please produce the same.

(It is now produced before the examiner and offered in evidence with the same stipulation in reference to the examiner procuring a certified copy of it and its being received in evidence with the same effect as the original.)

Mr. REDDING. Respondents make the same objection as last before, and I understand, Mr. Call, that where I use the words "same objection" it covers the remarks made in detail on the former objection?

Mr. CALL. That is understood.

(The certified copy when so made will be marked Plaintiff's Exhibit 22.)

(Mr. CALL.) Q. 13. Please state, Mr. Willcutt, how the pro-
433 ceedings of the board of directors of the Southern Pacific Railroad Company and the companies with which it amalgamated were kept and evidenced during the interval between August 12th, 1873, and June 20th, 1877, both dates inclusive.

Mr. REDDING. Same objection.

A. In a record book indorsed: "Record A, Southern Pacific R. R. Co.'

(Mr. CALL.) Q. 14. Will you now produce such record book?

M. REDDING. Same objection.

A. It is produced.

(Mr. CALL.) Q. 15. State whether or not there is any other record book or record of proceedings of any of the companies named in those several articles of consolidation and amalgamation other than in this book, which is now produced, referring to proceedings and business between those dates of August 12th, 1873, and June 20th, 1877, inclusive?

A. Those books were discontinued after writing up the proceedings of the various consolidations and amalgamations.

Q. 16. There are no other records, then, besides this subsequent to those dates?

A. No, sir.

Q. 17. Of consolidation?

A. No, sir.

(The record book referred to is now produced before the examiner and certain portions of it are offered in evidence.)

434 Mr. REDDING. Same objection.

Mr. CALL. Being the proceedings of the board of directors relating to amalgamations and consolidations with the railroads named in the articles heretofore offered in evidence, and the proceedings of the board in reference to reorganization upon such articles being entered into, and the proceedings of the board of directors in reference to the adoption of lines of railroad and constructing the same, and ratifying and approving the railroads as constructed; and more particularly the meetings of the board of directors of such consolidated company held upon the dates as follows: August 12th, 1873; August 19th, 1873; April 10th, 1874; September 8th, 1874; October 1st, 1874; December 15th, 1874; the resolution regarding stock; December 17th, 1874, resolution showing the approval of stockholders; meeting of December 19th, 1874, in full, excepting copy of mortgage contained therein; the meeting of July 14th, 1875, except certain portions marked August 27th, 1875; the meeting of September 14th, 1875, excepting portions marked; meeting of December 2nd, 1875; March 28th, 1876; August 14th, 1876, except those portions marked "omit"; October 11th, 1876, the same; June 20th, 1877, in full.

I suppose it is stipulated, Mr. Redding, that copies shall be made of these proceedings at the expense of the plaintiff, to be compared by the examiner or notary and certified by him, to have the same effect as the original introduced?

Mr. REDDING. Yes, that is stipulated.

435 Mr. REDDING. The respondents object to the introduction of each one of these certified or equivalent to certified copies of these proceedings, on the ground that the same are immaterial, irrelevant in this, that they refer to transactions made in the business of the Southern Pacific Railroad Company after it had received its land grants from Congress and after Congress had recognized the former consolidations of the Southern Pacific Railroad Company with other corporations and entered into between the years 1866 and 1873.

Mr. CALL. And such copies when prepared and certified will be marked Plaintiff's Exhibit 23.

Q. 18. Have you in your custody and control as secretary of the Southern Pacific Railroad Company the articles of association and consolidation entered into between the Southern Pacific Railroad Company and various other roads and dated in 1878—the articles of association and consolidation entered into next after those of 1874?

A. There is no consolidation between 1874 and 1888.

Q. 19. Then 1888 is what I had in my mind, instead of 1878. You have the articles of consolidation of 1888 between the Southern Pacific Railroad Company and other companies?

A. I have.

Q. 20. If you will, please produce the same before the examiner.

A. There they are (producing the same).

Mr. CALL. These articles are dated May 4th, 1888, and are
436 marked "articles of association, incorporation, amalgamation, and consolidation, Southern Pacific Railroad Company with the San Jose & Almaden" and sixteen other railroad companies, and are offered in evidence, and I suppose it is stipulated that a copy shall be made by the examiner, certified by him, and considered in evidence with the same effect as the original articles, and when so copied shall be marked Plaintiff's Exhibit 24.

Mr. REDDING. I enter my same objection now to the introduction of this document as to the others heretofore introduced.

Mr. CALL. I believe that is all.

Cross-examination by Mr. REDDING:

Q. 1. Mr. Willcutt, what has been the name of the corporation for which you have been secretary since the date that you have mentioned?

A. Southern Pacific Railroad Company.

Q. 2. Has there been any change of any nature in the name or style of that corporation?

A. No, sir.

Q. 3. Has there been any re-employment by you by that corporation, or has your employment been continuous since the original employment?

A. It has been continuous.

Q. 4. Have there been any reports or any calls for reports made to the Government of the United States since the dates of the two land grants made to this company, which dates of the two land grants are July 27th, 1866, and March 3rd, 1871?

437 Mr. CALL. Objected to as incompetent, immaterial, and irrelevant.

A. There has been.

(Mr. REDDING.) Q. 5. Have you been in communication with the Government of the United States through any of its officials in the Executive Department thereof in relation to these land grants?

Mr. CALL. Same objection.

A. Yes, sir.

(Mr. REDDING.) Q. 6. Are you still in communication with them?

A. Yes, sir.

Q. 7. Will you state a little in detail in relation to what matters?

A. Reports of the operations of the road; annual reports which have been called for and which have been filed.

Q. 8. Can you produce at some future time, to be introduced as documentary evidence, the necessary proofs showing that reports have been forwarded under your direction?

A. I can furnish copies of all such reports.

Q. 9. You will do so if requested hereafter?

Mr. CALL. Objected to upon the same grounds.

A. Yes, sir.

(Mr. REDDING.) Q. 10. Have you in your possession any contracts or consolidations or articles of any nature entered into between the Southern Pacific Railroad Company and other companies during the year 1865?

A. I have.

438 Q. 11. Will you please produce the document? What is the date of it?

A. It is dated November 29th, 1865, and filed on December 2nd, 1865.

Mr. REDDING. The respondents introduce this document, which is entitled "Under the seal of the secretary of state to be a true, full, and correct copy of articles of association of the Southern Pacific Railroad Company, given under the seal on the 21st day of December, A. D. 1868, as being a certified copy." The date of the articles or agreements themselves being the 29th day of November, 1865. Introduced by the respondents and marked Respondents' Exhibit 100.

(Mr. REDDING.) Q. 12. You have that document in your possession as custodian and secretary of the affairs of the Southern Pacific Railroad Company?

A. Yes, sir.

Q. 13. Have you also in your possession in such capacity articles of agreement between the Southern Pacific Railroad and the San José and Santa Clara and Pajaro railroad companies, entered into the 11th day of October, 1870?

A. I have.

Mr. REDDING. The respondents offer the said document, the original thereof, with the understanding, as in the former instances, that a certified copy of the same may be used in lieu of the original, to all intents and purposes, same to be marked Respondents' Exhibit 101.

439 Mr. CALL. Same objection.

The WITNESS. I would like to correct my testimony referring to my having been secretary of the company since October 4th, 1870. It proves to be October 12th, 1870.

(Mr. REDDING.) Q. 14. Do you know from your official connection with the Southern Pacific Railroad Company whether or not there have been bonds issued by that company to secure the payment of money borrowed, and in which bonds the various lands granted are set forth for the purposes of security and the payment of them?

Mr. CALL. Same objection.

A. There have been bonds issued.

(Mr. REDDING.) Q. 15. Are any of those bonds outstanding now?

Mr. CALL. Same objection.

A. Yes, sir.

(Mr. REDDING.) Q. 16. At what time were the first of those bonds issued, to the best of your recollection? Or, if you can inform us from the record, please do so.

Mr. CALL. Same objection.

A. Bonds of various dates, from April 1st, 1875, to April 1st, 1882.

(Mr. REDDING.) Q. 17. Can you produce a blank form of one of those bonds of each of those dates for the purpose of being introduced as an exhibit in this case?

A. The bonds are similar with the exception of the dates, being numbered or lettered Series A, B, C, D, E, and F.

440 Q. 18. Can you produce a form of the bond in the form of mortgage that you have?

A. I can.

Q. 19. Please do so at your convenience, so that I can introduce it as an exhibit, and which will be marked Respondents' Exhibit 102.

Mr. CALL. Objected to as incompetent, immaterial, and irrelevant.

(Mr. REDDING.) Q. 20. Do you know of your own knowledge whether any of these bonds have been sold or placed upon the market and money for the same received by the Southern Pacific Railroad Company?

Mr. CALL. Same objection.

A. There have been.

(Mr. REDDING.) Q. 21. Do you know whether or not any of the annual reports that you have sent to the officers of the United States Government have been received by them?

Mr. CALL. Same objection.

(Mr. REDDING.) Q. 22. Have you any correspondence which will show the receipt of these annual reports by the Government?

A. I think the receipt has been generally acknowledged.

Q. 23. Do you know that as a fact; do you know that the reports have been received?

Mr. CALL. Same objection.

A. Yes, sir.

Mr. REDDING. That is all.

441 Redirect examination by Mr. CALL:

Q. 1. Mr. Wilcutt, has the Southern Pacific Railroad Company, or have you as secretary of that company, addressed any official communication in writing to the United States, or to any of the Departments of the United States, informing the United States that the Southern Pacific Railroad Company had entered into any of the articles of association and consolidation which we have introduced in evidence?

A. That is recited in many of the forms of reports. The information is given in those reports. The question is asked practically: What constitutes the Southern Pacific Railroad Company of to-day?

Q. 2. Well, please also attach any report containing such information, so it will appear whom it was given to.

(Same to be marked Plaintiff's Exhibit 25.)

(Mr. REDDING.) Q. I understand that the information which was conveyed in that way was directed to the officers of the Government?

A. Yes, sir.

J. L. WILLCUTT.

Subscribed and sworn to before me this eleventh (11th) day of December, A. D. 1890.

[SEAL.]

CHAS. T. STANLEY,
Notary Public and Examiner.

442 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Chas. T. Stanley, a notary public in and for said city and county of San Francisco, State of California, duly commissioned and sworn, and the examiner named in the stipulation hereunto annexed, do hereby certify that the witness, J. L. Willcutt, in the foregoing deposition named, was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was taken on the 24th day of November, A. D. 1890, at the offices of the Southern Pacific Railroad Company, corner of Fourth and Townsend streets, in the city and county of San Francisco, State of California, to which time and place a continuation and adjournment was had from the time and place mentioned in the annexed stipulation; that said deposition was taken between the hours of one o'clock and five o'clock p. m. of said 24th day of November, A. D. 1890; that said deposition was taken by Lawrence J. Girvin, a stenographer, a disinterested party, in my presence, and thereafter by him reduced to typewriting, and when said deposition was completed the samewas by me carefully read to said witness, and being by said witness corrected was by him subscribed in my presence.

In witness whereof, I have hereunto set my hand and affixed my official seal this 28th day of December, A. D. 1890.

[SEAL.] CHAS. T. STANLEY,
Notary Public and Examiner.

465 [Plff's Ex. 23. C. T. S. N. P. Plaintiff's Exhibit 23. Plff's Ex. 23. C. T. S. N. P.]

(Extract.)

DIRECTOR'S MEETING,
August 12th, 1873.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held on Tuesday, August 12th, 1873, at 2 o'clock, p. m.

Present: Directors D. D. Colton, Robert Robinson, Chas. Mayne, S. T. Gage, and J. L. Willcutt.

Absent, Directors C. P. Huntington and E. H. Miller, jr.

In the absence of the president and vice-president, on motion duly seconded, Charles Mayne was called to the chair. The record of the proceedings of the last meeting of the board was read and approved. The secretary presented the certificate of election at the annual meeting held on the 11th inst., which on motion was received and ordered to be placed on file.

The board then proceeded to the election of officers, with the following result: C. P. Huntington was elected president, David D. Colton was elected vice-president, E. H. Miller, jr., was elected treasurer, J. L. Willcutt was elected secretary; whereupon the chair was vacated, and in the absence of the president, D. D. Colton presided as vice-president of the board.

The following resolution was offered by Robert Robinson, and, being duly seconded, was adopted by a unanimous vote:

466 Resolved, that this corporation do consolidate with the Southern Pacific Branch Railroad Company upon the terms and

conditions set forth in the articles of association, amalgamation, and consolidation now herewith presented, which are hereby approved, and the vice-president (in the absence of the president) and secretary of this company are hereby authorized and required to subscribe the name of this corporation to said articles, and affix its corporate seal thereto and deliver said articles as the act and deed of this corporation.

Thereupon, the vice-president and secretary executed the said articles of association, amalgamation, and consolidation, and the corporate seal of the company was thereto affixed.

No other business appearing before the board, the foregoing minutes were read and approved, whereupon the meeting adjourned sine die, it first having been ordered that the articles referred to be engrossed upon these minutes.

(Then follows a copy of the articles of association, amalgamation, and consolidation made and executed on the 12th day of August, 1873, by and between the Southern Pacific Railroad Company of the first part and the Southern Pacific Branch Railroad Company of the second part; a copy of which is hereto annexed and marked Plaintiff's Exhibit 21.

(Signed) J. L. WILLCUTT, *Secty.*

(Extract.)

DIRECTOR'S MEETING,
August 19*th*, 1873.

467 The board of directors named in article third of the articles of association, amalgamation, and consolidation of a new corporation under the name and style of the Southern Pacific Railroad Company, to wit: C. P. Huntington, D. D. Colton, Robert Robinson, Chas. Mayne, S. T. Gage, E. H. Miller, jr., and J. L. Willcutt met at the office of the company on Tuesday, August 19th, 1873, at 2.15 p. m., for the purpose of organizing as a board by the election of the necessary officers for the ensuing year.

Present: D. D. Colton, Robert Robinson, Charles Mayne, S. T. Gage, and J. L. Willcutt.

Absent: Directors C. P. Huntington and E. H. Miller, jr.

On motion, Chas. Mayne was called to the chair, and J. L. Willcutt appointed temporary secretary.

The articles of association, amalgamation, and consolidation were thereupon presented and read and ordered to be engrossed upon the minutes of the meeting. The following is a copy:

(Then follows a copy of the articles of association, amalgamation, and consolidation made and executed on the 12th day of August, A. D. 1873, by and between the Southern Pacific Railroad Company of the first part and the Southern Pacific Branch Railroad Company of the second part; a copy of which is hereto annexed and marked Plaintiff's Exhibit 21.)

The board then proceeded to the election of officers, with the following result: C. P. Huntington was elected president, David D. Colton was elected vice-president, E H. Miller, jr., was elected treasurer, J. L. Willcutt was elected secretary.

468 The bond of E. H. Miller, jr., was presented, in the sum of fifty thousand dollars, with Leland Stanford and Mark Hopkins sureties

thereon; and in like manner the bond of J. L. Willcutt, the secretary, in the sum of twenty thousand dollars, with H. M. Newhall and Charles Mayne sureties thereon; and on motion duly seconded were accepted and approved as the official bonds of said treasurer and said secretary, and ordered to be placed on file.

No other business appearing before the board, and the foregoing minutes having been duly read and approved, on motion duly seconded the meeting adjourned.

J. L. WILLCUTT, *Secretary.*

(Extract.)

DIRECTOR'S MEETING,
April 10th, 1874.

A meeting of the board of directors of the Southern Pacific Railroad Co. was held at the office of the company, on Friday, the 10th day of April, A. D. 1874, at 2 o'clock p. m., pursuant to a call of the vice-president.

Present: Directors D. D. Colton, Robert Robinson, E. H. Miller, jr., S. T. Gage, and J. L. Willcutt; Vice-President D. D. Colton, presiding.

Absent: Directors C. P. Huntington and Chas. Mayne.

The record of proceedings of the last meeting of the board was read and approved.

The following resolution was offered by Robert Robinson, and, being duly seconded, was adopted by a unanimous vote:

469 Resolved, That the line of railroad as it has been surveyed and laid out on map marked "AA," and described as follows: Commencing at a point in the northwest quarter (NW. ¼) of section (3), township two (2) north, range fifteen (15) west, San Bernandino base and meridian, and running thence in a southeasterly direction to the city of Los Angeles, and thence in an easterly direction to a point in the northeasterly quarter (NE. ¼) of section twenty-seven (27), township one (1) south, range nine (9) west, San Bernardino base and meridian, being map and profile of section No. one, Southern Pacific Railroad and telegraph line authorized by the twenty-third section of the Texas Pacific Railroad act, approved March 3rd, 1871, be, and the same is hereby, adopted as the route of said railroad between the points named.

(Signed) J. L. WILLCUTT,
Secty.

DIRECTORS' MEETING,
September 8th, 1874.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, September 8th, 1874, pursuant to the by-laws, Vice-President Chas. Crocker presiding.

Present: Directors Chas. Crocker, Robert Robinson, E. H. Miller, jr., S. T. Gage, and J. L. Willcutt.

Absent: Directors C. P. Huntington and D. D. Colton.

The record of proceedings of the last meeting of the board was read and approved.

470 The following resolution was offered by Robert Robinson, and, being duly seconded, was adopted by a unanimous vote:

Resolved, That the line of the railroad as it has been surveyed and laid out on map marked D, and described as follows: Commencing at a point at the end of the 40th mile on the line south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad, said point of commencement being in the northwest quarter of section two, township twenty-five south, range twenty-five east, Mount Diablo base and meridian, running thence in a southeasterly direction and ending at the termination of the 20th mile therefrom, in the northeast quarter of section nine, township twenty-eight south, range twenty-six east, Mount Diablo base and meridian, be, and the same is hereby, adopted as the route of said railroad between the points named.

The Contract and Finance Company reported the completion of the road referred to in the foregoing resolution, and asked the acceptance of the same, whereupon the following resolution was offered by E. H. Miller, jr., and on motion, duly seconded, was adopted by a unanimous vote:

Resolved, That the company accepts the twenty miles of railroad and telegraph line completed by said Contract and Finance Company, and that the proportion of stock and bonds which said Contract and Finance Company are entitled to receive under their contract of May 1st, 1871, be, and the same is hereby, ordered to be issued and delivered to

471 said Contract and Finance Company, and a proper receipt taken therefor and filed as a voucher for said payment.

The following resolution was offered by Robert Robinson, and, being duly seconded, was adopted by a unanimous vote:

Resolved, That the line of the railroad as it has been surveyed and laid out on the map marked AAA, and described as follows: Commencing at a point where the Pajaro branch of the Southern Pacific Railroad intersects the main line of said railroad at Carnadero Station, 2.2 miles southerly from Gilroy, thence southerly via Pajaro and Salinas to a point on the northerly bank of the Salinas River near the town of Soledad, a distance of 60.4 miles from said point of commencement, be, and the same is hereby, adopted as the route of said railroad between the points named.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT,
Secty.

DIRECTORS' MEETING,
October 1st, 1874.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the company's office, on Thursday, October 1st, A. D. 1874, at 2 o'clock p. m., pursuant to call of Directors Chas. Crocker, D. D. Colton, and Robert Robinson, Vice-President Chas. Crocker presiding.

472 Present: Directors Chas. Crocker, D. D. Colton, Robert Robinson, E. H. Miller, jr., S. T. Gage, and J. L. Willcutt.

Absent: Director C. P. Huntington.

The following resolution was offered by Robert Robinson, and, being duly seconded, was adopted by a unanimous vote:

Resolved, The line of the railroad as it has been surveyed and laid out on map marked E, and described as follows: Commencing at a point at the end of the 60th mile on the line south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad, said point of commencement being the northeast quarter of section nine, township twenty-eight south, range twenty-six east, Mount Diablo base and meridian, running thence in a southeasterly direction a distance of thirteen and $\frac{65}{100}$ miles, be, and the same is hereby, adopted as the route of said railroad between the points named.

The Contract and Finance Company having reported the completion of the road referred to in the foregoing resolution and asked the acceptance of same, the following resolution was offered by S. T. Gage, and, being duly seconded, was adopted by a unanimous vote:

Resolved, That the company accept the thirteen and $\frac{65}{100}$ miles of railroad and telegraph line completed by said Contract and Finance Company, and that the proportion of stock and bonds which said Contract and Finance Company are entitled to receive under their contract of May 1st, 1871, be, and the same is hereby, ordered to be issued and delivered to
473 said Contract and Finance Company and a proper receipt taken therefor and filed as a voucher for such payment.

The Contract and Finance Company having presented an account for the construction of fifty miles of road in Los Angeles County as laid out on map marked AA, and described on page 136 of these minutes, the following resolution was offered by E. H. Miller, jr., and adopted by unanimous vote:

Resolved, That the company accept the 50 miles of railroad and telegraph line completed by said Contract and Finance Company, and it is hereby ordered that stock and bonds be issued to said Contract and Finance Compy. in payment therefor in the same proportion as provided for in the contract for construction of May 9th (dated May 1st, 1871,) the said contract having been made prior to the consolidation of the main line with the line from a point at or near Taheechaypah Pass via Los Angeles.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT, *Secty.*

DIRECTORS' MEETING,
December 15th, 1874.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, December 15th, A. D. 1874, pursuant to the following notice:

"The board of directors of the Southern Pacific Railroad Com-
474 pany are hereby notified that a special meeting of the board will be held at the office of the company, corner of Fourth and Townsend streets, San Francisco, on Tuesday, the 15th inst., at 2 o'clock p. m., for the purpose of acting upon the resignation of C. P. Huntington, pres-

ident and director of said company, and electing his successor or successors and for the transaction of such other business as may come before the board.

"San Francisco, December 14th, 1874.

(Sgd.) "CHAS. CROCKER,
(Sgd.) "S. T. GAGE,
(Sgd.) "J. L. WILLCUTT,
Directors.

"Service of the foregoing notice by copy acknowledged this 14th day of December, 1874. (Sgd.) Robert Robinson, E. H. Miller, jr., David D. Colton."

Present: Directors Charles Crocker, David D. Colton, E. H. Miller, jr., S. T. Gage, Robert Robinson, and J. L. Willcutt; Vice-President Charles Crocker, presiding.

Absent: Director C. P. Huntington.

The record of proceedings of the last meeting of the board was read and approved.

The vice-president stated that the object of the meeting was to act upon the resignation of C. P. Huntington as president and director of the company; whereupon a communication was presented from Mr. Huntington, tendering his resignation as president and a director of the company.

On motion of David D. Colton, duly seconded, the resignation of C. P. Huntington was accepted.

475 On motion of Robert Robinson, duly seconded, the board proceeded to fill the vacancy in the board of directors caused by the resignation of Mr. Huntington.

N. T. Smith was placed in nomination, and having received a unanimous vote, was declared duly elected a director of the company.

The board then proceeded to the election of a president, to fill the vacancy caused by the resignation of Mr. Huntington.

Charles Crocker having been placed in nomination, and receiving a unanimous vote, was declared duly elected president of the company.

The election of Mr. Crocker as president having caused a vacancy in the office of vice-president, the board proceeded to fill the vacancy.

David D. Colton was placed in nomination, and having received a unanimous vote of the directors, was declared duly elected vice-president of the company.

On motion of Robert Robinson, duly seconded, it was unanimously ordered that the fifteen hundred shares of the capital stock of the Los Angeles and San Pedro Railroad Company donated to this company by the county of Los Angeles, and the seven hundred and fifty shares of same donated by the city of Los Angeles to this company, be transferred to the Contract and Finance Company, and applied on account of contract for construction of road in same manner and proportion as the stock of the Southern Pacific Railroad Company.

No further business appearing before the board, and the fore-
476 going minutes having been read and approved, on motion, duly seconded, the meeting adjourned to Thursday, the 17th of August, at 2 o'clock p. m.

J. L. WILLCUTT,
Secretary.

DIRECTORS' MEETING,
December 17th, 1874.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Thursday, December 17th, A. D. 1874, at 2 o'clock p. m., pursuant to adjournment, all of the directors being present, to wit: Charles Crocker, David D. Colton, E. H. Miller, jr., Robert Robinson, N. T. Smith, S. T. Gage, and J. L. Willcutt; Chas. Crocker presiding as president of the board.

The following resolution was offered by Robert Robinson, to wit:

Resolved, That this corporation do consolidate with the Los Angeles and San Pedro Railroad Company upon the terms and conditions set forth in the articles of association, amalgamation, and consolidation now herewith presented, which are hereby approved, and the president and secretary of this company are hereby authorized and required to subscribe the name of this corporation to said articles and affix its corporate seal thereto, and deliver said article as the act and deed of this corporation:

Which resolution was adopted by the unanimous vote and con-
477 currence of the full board of directors; the articles referred to in this resolution being as follows:

(Then follows a copy of the articles of association, amalgamation, and consolidation made and executed on the 17th day of December, A. D. 1874, by and between the Southern Pacific Railroad Company, of the first part, and the Los Angeles and San Pedro Railroad Company, of the second part; a copy of which is hereto annexed and marked Plaintiff's Exhibit 22.)

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned to Saturday, 19th August, at 11 o'clock a. m.

DIRECTORS' MEETING,
December 19th, 1874.

The board of directors named in article third of the articles of association, amalgamation, and consolidation of the new corporation under the name of the Southern Pacific Railroad Company, to wit: Charles Crocker, David D. Colton, E. H. Miller, jr., Robert Robinson, Nicholas T. Smith, Stephen T. Gage, and Joseph L. Willcutt, met at the office of the company on Saturday, December 19th, 1874, at 11 o'clock a. m., pursuant to adjournment, a full board being present.

On motion, David D. Colton occupied the chair, and J. Willcutt was appointed secretary of the meeting.

Robert Robinson reported that the articles of association, amalgamation, and consolidation had been duly executed and filed in the office of the secretary of state, and presented a certified copy thereof, reading as follows:

478 (Then follows a copy of the articles of association, amalgamation, and consolidation made and executed on the 17th day of December, A. D. 1874, by and between the Southern Pacific Railroad Company, of the first part, and the Los Angeles and San Pedro Railroad Company, of the second part; a copy of which is hereto annexed and marked Plaintiff's Exhibit 22.)

The board then proceeded to the election of officers, with the following result: Charles Crocker was elected president, David D. Colton was elected vice-president, J. L. Willcutt was elected secretary, E. H. Miller, jr., was elected treasurer; whereupon it was declared that the board was duly organized, and, David D. Colton vacating the chair, Charles Crocker presided as president of the board.

On motion of David B. Colton, duly seconded, the following appointments were made, to continue in effect during the pleasure of the board:

George E. Gray, to the position of chief engineer; B. B. Redding, to the position of land agent; Leland Stanford and C. P. Huntington, general agents.

On motion of David D. Colton, duly seconded, it was unanimously resolved:

That C. P. Huntington be appointed agent of this company to receive from the United States Government any moneys due or that may become due to the company for services rendered in carrying U. S. mails, with authority to execute receipts therefor, as also to draw any orders or drafts in favor of other persons that may be necessary for this purpose.

479 On motion of J. L. Willcutt, duly seconded, it was unanimously ordered that the seal presented (of which an impression is hereto affixed) be hereby adopted as the common or corporate seal of this company.

(Then appears an impression of the seal stamped upon the margin of the page.)

A code of by-laws was presented by the secretary of the company, reading as follows:

(Then follows a copy of the by-laws of the Southern Pacific Railroad Company; a copy of which is hereunto annexed and marked Plaintiff's Exhibit 23 a.)

On motion, the by-laws as presented were adopted, and the secretary was instructed to present a copy of the same to the stockholders for their approval.

The following resolutions were offered by David D. Colton, and adopted by the unanimous vote and concurrence of all the directors:

Resolved, That it is necessary, for the construction and completion of the railroad of this company, and the proper equipment of the same, and the payment of its debts and cancellation of its first-mortgage bonds, to borrow the sum of forty-six millions of dollars.

Resolved, That, for the purpose of effecting and procuring said loan and evidencing and securing the same, the president and secretary of this company are hereby authorized and required to have prepared, and to execute and issue, forty-eight thousand mortgage bonds of this company, in seven series, each series to be designated by the letters of the alphabet, commencing with the letter A and followed by the succeeding letters in

480 regular order to the letter G, both inclusive; series A consisting of thirteen thousand bonds for one thousand dollars each, numbered from 1 to 1300, both inclusive, and four thousand bonds for five thousand dollars each, numbered from 13,001 to 17,000, both inclusive; series B to F, both inclusive, consisting each of five thousand bonds for one thousand dollars each, numbered from 17,001 to 42,000, both inclusive; and series G, consisting of six thousand bonds for one thousand dollars each,

numbered from 42,001 to 48,000, both inclusive; all of said bonds being payable thirty years after date, with interest at the rate of six per centum per annum, payable semiannually; the said series A to bear date April 1st, 1875, and the said several succeeding series to bear such dates respectively as the board of directors of said company may direct; all of said bonds aggregating the sum of forty-six millions of dollars.

Resolved, That, the said series A of said bonds shall be executed and issued in substantially the following form, and that the succeeding series of said bonds shall be in a similar form, with the necessary changes to conform to said resolutions or orders, which form is as follows, to wit:

(Then follows a copy of the bond, which is also set out in mortgage dated April 1st, 1875, from the Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, a copy of which is hereunto annexed and marked Respondent's Exhibit 102.)

Resolved and ordered, That to each of said bonds there shall be attached sixty interest coupons, numbered respectively from one (1) to sixty (60), inclusive, substantially in the following form, to wit:

481 (Then follows the form of the coupon attached to said bond, which is also set out in the above-mentioned mortgage.)

And be it further resolved, That to secure the payment of the said bonds a first mortgage upon said road and its rolling stock, stations, fixtures, right of way, and franchises, and the lands granted to it by Congress by the act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the States of Missouri and Arkansas to the Pacific coast," approved July 27th, 1866, and the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3rd, 1871, not sold or otherwise disposed of, or contracted to be sold as shown by the books of said company, shall be executed under the corporate seal of said company, and be signed by its president and secretary, to D. O. Mills and Lloyd Tevis, both of the city and county of San Francisco and State of California, as trustees for the holders of said bonds.

Resolved, That a sinking fund shall be created for the redemption and payment of said bonds by setting apart the sum of one hundred thousand dollars of the net income of said road in the year 1882, and each year thereafter until all of said bonds, principal and interest, shall have been redeemed or paid, in trust, to be loaned out at interest upon good security, or otherwise invested under the order and direction of the board of directors; or it may be used to purchase bonds as often as one hundred thousand dollars comes into the sinking fund, in which case notice shall be published in one paper in the city of San Francisco and two

482 papers in New York City that bonds will be purchased at a price not exceeding their par value, and inviting bids for the surrender of bonds at prices to be named, not exceeding the par value of said bonds, the lowest bid less than par to be accepted, and bonds redeemed to the extent of money in the sinking fund.

And it is further ordered and resolved, That the said bonds when executed shall be sold, hypothecated, or otherwise disposed of by the duly authorized officers and agents of the company upon the most favorable terms which can be obtained, as the same may be needed in taking up and

cancelling the bonds of the company now outstanding, and in the construction and equipment of the railroad and telegraph line of said company, for the payment of the debts, contracts, and liabilities, and in carrying on the business of said company.

Resolved, That the provisions of the mortgage, so far as it affects the land and the disposition of the funds arising therefrom and the management thereof, shall be kept separate and distinct from that part of the mortgage of the railroad of said company, although in the same instrument, so that either property can be sold and disposed of or foreclosed without reference to or injury to the other, and the mode of sale and disposition of the funds arising therefrom shall be as provided in said mortgage, the draft of which is herewith presented and is hereby approved and ordered to be adopted.

(Then follows copy of mortgage, dated April 1st, 1875, from the Southern Pacific Railroad Company to D. O. Mills and Lloyd Tevis, trustees, a copy of which is hereunto annexed and marked Respondent's Exhibit 102.)

483 No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT, *Secretary.*

DIRECTORS' MEETING,
July 14th, 1875.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Wednesday, July 14th, A. D. 1875, at 2 o'clock p. m., pursuant to the call of the president.

Present: Directors Chas. Crocker, David D. Colton, E. H. Miller, jr., Robert Robinson, S. T. Gage, N. T. Smith, and J. L. Willcutt. President Chas. Crocker, presiding.

On motion of S. T. Gage, duly seconded, it was unanimously

Resolved, That in pursuance of the by-laws an annual meeting of the stockholders of the company be held at the office of the company on Monday, August 9th proximo, commencing at one o'clock p. m. and ending at two o'clock p. m., and that N. T. Smith from the directors and E. J. Robinson from the stockholders by, and are hereby, appointed to act with the president as judges of election.

The following resolution was offered by David D. Colton and adopted by a unanimous vote:

Resolved, That the line of the railroad as it has been surveyed and laid out on map marked E, and described as follows: Commencing at
484 a point at the end of the sixteenth mile on the line of said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad (said point of commencement being in the northeast quarter of section nine, township twenty-eight south, range twenty-six east, Mount Diablo base and meridian), running thence in a southeasterly direction, and ending at the termination of the twentieth mile therefrom in the northeast quarter of section five, township thirty south, range twenty-nine east, Mount Diablo base and meridian, be, and the same is hereby, adopted as the route of said railroad between the points named.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, the meeting adjourned.

J. L. WILLCUTT, *Secretary.*

DIRECTORS' MEETING,
September 14th, 1875.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, September 14th, A. D. 1875, at 2 o'clock p. m., in pursuance of the by-laws.

Present: Charles Crocker, David D. Colton, Robert Robinson, E. H. Miller, jr., and J. L. Willcutt. President Charles Crocker presiding as president of the board.

485 Absent: Directors N. T. Smith and S. T. Gage.

On motion of Robert Robinson, duly seconded, the following resolution was unanimously adopted:

Resolved, 1st, That it is expedient and that it is the intention of this board, if no stockholder protests against it, to amend the second article of the amended certificate of incorporation of this company so as to provide for the construction, maintenance, and operation of a branch road, running from the present terminus of the road of the company in the city and county of San Francisco in a southerly direction along the shore, as near as may be, of the bay of San Francisco, to a point on the existing line of road of the company at or near San Bruno Station, in the county of San Mateo, an estimated distance of eleven miles.

Resolved, 2nd, That the secretary of the company cause the following notice of the foregoing intention to be published for sixty days in the Daily Alta California, a daily newspaper published in the principal place of business of the company, to wit, the city and county of San Francisco:

"NOTICE.

"*To the stockholders of the Southern Pacific Railroad Company:*

"You and each of you are hereby notified that it is the intention of the board of directors of the Southern Pacific Railroad Company, acting under and pursuant to the provisions of an act of the legislature of the State of California entitled 'An act relating to certificates of
486 'incorporation' (approved March 1st, 1870), to amend article 2nd of the amended certificate of incorporation of said company, to wit: The articles of association, amalgamation, and consolidation made and executed on the eleventh day of October, A. D. 1870, as amended by the board of directors of said company on the eleventh day of April, A. D. 1871, so as to provide for the construction of a branch road running from the present terminus of the road of said company in the city and county of San Francisco, in a southerly direction along the shore, as near as may be, of the Bay of San Francisco, to a point on the existing line of road of said company at or near San Bruno station, in the county of San Mateo, an estimated distance of eleven miles.

"By order of the board of directors of the Southern Pacific Railroad Company made on the 14th day of September, 1875.

"Witness my hand and the seal of said company hereunto affixed on this the 15th day of September, 1875.

"[SEAL.] *Secretary.*"

The following preamble and resolution was offered by J. L. Willcutt, and being duly seconded, was adopted by a unanimous vote:

Whereas, at a meeting of the board of directors held on the 19th day of December last, the president and secretary of this company were authorized to have prepared and to execute and issue forty-eight thousand mortgage bonds in seven series, each series to be designated by the letters of the alphabet, commencing with A, and followed by the succeeding letters to G, inclusive, the said series A to bear date April 1st, 1875,
487 and the said several succeeding series such dates, respectively, as the board of directors may direct; therefore be it

Resolved, that the said series B of said bonds shall bear the date of October 1st, A. D. 1875, and the first interest coupon thereon be due and payable on the first day of April, A. D. 1876;

Which resolution was adopted by a unanimous vote:

The following resolution was offered by E. H. Miller, jr., and on motion, duly seconded, was adopted by a unanimous vote:

Resolved, that the line of railroad as it has been surveyed and laid out on map marked "BB" and described as follows: Commencing at a point in the northeast quarter (NE. ¼) of section twenty-seven (27), township one (1) south, range nine (9) west, San Bernardino base and meridian, and running thence in a southeasterly direction to a point in the southwest quarter (SW. ¼) of section four (4), township three (3) south, range one (1) west, San Bernardino base and meridian, being the map and profile of section No. 2 of the Southern Pacific Railroad and Telegraph Line, authorized by the twenty-third section of the Texas Pacific Railroad act, approved March 3rd, 1871, be, and the same is hereby, adopted as the route of said railroad between the points named.

No further business appearing before the board and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT,
Secretary.

488 DIRECTORS' MEETING,
December 2nd, 1875.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Thursday, December 2nd, A. D. 1875, at 2 o'clock p. m., pursuant to the call of the vice-president in absence of the president.

Present: Directors David D. Colton, E. H. Miller, jr., S. T. Gage, N. T. Smith, and J. L. Willcutt; Vice-President David D. Colton, presiding.

Absent: Directors Chas. Crocker and Robert Robinson.

The secretary reported the burning of the old bonds and coupons as authorized at meeting October 22nd, and presented the following affidavit, which was ordered to be spread upon the minutes:

"We, C. P. Huntington, financial agent of the Southern Pacific Railroad Company, and I. E. Gates, both of the city of New York, State of New York, do hereby certify that we have examined and burned fourteen thousand three hundred and forty-six (14,346) first mortgage bonds of the said company (numbered 1 to 14,346 inclusive), for one thousand dollars each, and payable to C. P. Huntington or bearer, and bearing date on the first day of November, in the year one thousand eight hundred and seventy, and bearing interest at the rate of six per cent per annum, together with all the coupons thereto belonging, namely, numbers 1 to 60 inclusive, in accordance with instructions of the board of directors of said company by resolution adopted October 22nd, A. D. 1875, certified copy of which is hereto attached, with the exception of seven hundred and fifty (750) coupons, the same being coupons numbered three (3), four (4), and five (5) of said Southern Pacific Railroad Company bonds numbered six thousand two hundred and fifty-one (6,251) to six thousand and five hundred (6,500) inclusive, amounting in the aggregate to twenty-two thousand and five hundred dollars ($22,500), which said coupons were lost by one John Miller and paid by the said Southern Pacific Railroad Company on or about June 16th, 1875, for which a bond was given to indemnify the said company and the trustees against loss, and the coupons last aforesaid not having been found have not been included among those burned by us.

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"In witness whereof we have hereunto set our hands this 9th day of November, 1875.

(Sgd.) "C. P. HUNTINGTON.
(Sgd.) "I. E. GATES.

"CITY AND COUNTY OF NEW YORK, *ss:*

"Before me personally appeared Colis P. Huntington and Isaac E. Gates, to me known as the persons named in, and who executed the foregoing instrument, and severally acknowledged the signing and execution of the same for the uses and purposes therein mentioned.

"Witness my hand and official seal this ninth day of November, A. D. eighteen hundred and seventy-five.

[SEAL.] (Sgd.) "WILLIAM C. MCKEAN,
"*Notary Public, New York City and Co.*"

490 The following preamble and resolution, on motion of E. H. Miller, jr., were unanimously adopted:

Whereas this company has constructed over five hundred miles of its road from the city of San Francisco to its proposed junction with the Texas Pacific Railroad, at or near the Colorado River, in the southeastern part of the State, leaving only two hundred miles to be completed, upon which the heaviest work is nearly finished;

And whereas this company expects to complete its road to the Colorado River by the first of July, 1876;

And whereas, the eastern portion of the road will be of little value to the company, and of little convenience to the public, so long as it remains without a connecting road running to the east on the line of the so-called Texas Pacific Railroad;

And whereas it is of vital importance to the company to secure as speedily as possible a through railroad connection with the commercial centers of the East;

And whereas the Texas Pacific Railroad Company has failed to comply with the conditions imposed upon it by an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3rd, 1871:

Now, therefore, resolved, 1st, that this company, if so authorized and empowered by Congress, will undertake the construction and equipment of the entire railroad and telegraph line provided for in said act lying to the east of the eastern boundary line of the State of California, or to
491 construct the same to a point of connection with said Texas Pacific Railroad Company upon the same considerations, terms, conditions, restrictions, immunities, powers, rights, and privileges which by said act were granted to and imposed upon said Texas Pacific Railroad Company, and will agree to complete the same within five years after the passage of an act by Congress, vesting in it all the grants, powers, rights, privileges, and immunities, and imposing upon it all the conditions, limitations, and restrictions respectively vested in and imposed upon said Texas Pacific Railroad Company by said act, and will ask of Congress no other or further aid.

Resolved, 2nd, that C. P. Huntington be, and hereby is, authorized and empowered on behalf of this company to submit the foregoing proposition to Congress and urge its acceptance.

Resolved, 3rd, that a copy of these resolutions, under the seal of the company and signed by the vice-president, the president being absent, and secretary, be forwarded to said Huntington.

A draft of a deed to the county of Los Angeles, reading as follows:

"Know all men by these presents that the Southern Pacific Railroad Company, a corporation formed and existing under the laws of the State of California, in consideration of the sum of fourteen thousand and five hundred dollars to it in hand paid by the county of Los Angeles, the receipt whereof the said company hereby acknowledges, has bargained, sold,
and quitclaimed, and by these presents does bargain, sell, and quit-
492 claim, unto the said county of Los Angeles, its successors and assigns, all its right, title, interest, estate, claim, and demand of, in, and to all that certain wagon and railroad bridge recently constructed by it across the Santa Ana River at the place where its railroad crosses said river in said county of Los Angeles; also, a right of way over its land to and from said bridge upon both sides of said river forty feet in width on the upper side of said company's right of way, and of a length sufficient to afford convenient access to and egress from said bridge: Provided, and it is expressly understood, and said county of Los Angeles by accepting this deed agrees, That the title to the land upon which said bridge stands shall be and remain in said Southern Pacific Railroad Company, and that said company reserves and retains the right to occupy and use the lower side of said bridge as a bridge for its railroad track and the passage of its engines and cars across said river, provided said company shall erect a suitable partition or bulwark separating the railroad part of said bridge from the wagon part thereof, so that trains may safely pass over said

bridge without incurring unnecessary danger from passing engines and cars, and provided further, and by accepting this deed said county agrees, that if said bridge shall be destroyed or become worn out and unfit for further use, then all the rights hereby granted to said county shall cease and revert to said railroad company,"

was presented and read; whereupon, on motion of S. T. Gage, it was unanimously ordered:

493 That the said deed be duly executed by the vice-president (the president being absent) and secretary, and that they sign the same and affix the seal of the company as the act and deed of this company.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT, *Sec't'y.*

DIRECTORS' MEETING.

March 28th, 1876.

A special meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Tuesday, March 28th, 1876, at 11 o'clock a. m., pursuant to the call of the president.

Present: Directors Charles Crocker, David D. Colton, Robert Robinson, E. H. Miller, jr., N. T. Smith, and J. L. Willcutt; Charles Crocker presiding as president of the board.

Absent: Director S. T. Gage.

The following resolution was offered by David D. Colton, and adopted by a unanimous vote:

Resolved, That the line of the railroad as it has been surveyed and laid out on map marked F, and described as follows: Commencing at a point at the end of the eightieth (80th) mile on the line of the said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad (said point

494 of commencement being in the northeast quarter (NE. ¼) of section five (5), township thirty (30) south, range twenty-nine (29) east, Mount Diablo base and meridian), running thence in a southeasterly direction, and ending at the termination of the twentieth (20th) mile therefrom in the southeast quarter (SE. ¼) of section thirty-three (33), township thirty (30) south, range thirty-one (31) east, Mount Diablo base and meridian, be, and the same is hereby, adopted as the route of said railroad between the points named.

The following resolution was offered by E. H. Miller, jr., and adopted by a unanimous vote:

Resolved, That the line of the railroad as it has been surveyed and laid out on map marked CC, and described as follows: Commencing at a point in the southwest quarter (SW. ¼) of section four (4), township three (3) south, range one (1) west, San Bernardino base and meridian, and running thence in a southeasterly direction fifty (50) miles to a point in the southwest quarter (SW. ¼) of section twenty-four (24), township five (5) south, range seven (7) east, San Bernardino base and meridian, be, and the same is hereby, adopted as the route of said railroad between the points named.

A communication was presented from the Western Development Co. reading as follows:

"SAN FRANCISCO, *March 27th*, 1876.

To the honorable board of directors Southern Pacific Railroad:

"GENTLEMEN: The Western Development Co. respectfully
495 represents that it has completed over one hundred and forty miles of road on its contract with your company.

"For particulars regarding the same would refer you to the chief engineer of your company.

"In consideration of the above facts the company would call your attention to the following points: Up to the present time no demand has been made upon your company for payment; the difficult character of the work which has been done; also the heavy expense attending the work now under construction; and would most respectfully request that the bonds and stock be issued to the extent of the number of miles now constructed, instead of awaiting the further completion of your road before issuing the same.

"Very respectfully,

(Signed) "F. S. DOUTY, *Pres't.*"

"SAN FRANCISCO, *March 18th*, 1876.

"*President Western Development Co.:*

"SIR: I submit the following for work done under your contract with this company to date:

	Miles.
Grading and equipping road from Summer to end of sec. 6	6.35
Grading and equipping section No. 7	20
" " " 7-10 to No. 8 completed	14
" " " from San Fernando Tunnel to San Fernando Station.	6
" " " Spadra to San Gorgonio, 2nd division	50
496 " " " San Gorgonio to 1st Indian Well 3rd divisions 10 completed	45
Total miles	141.35

"Respectfully submitted.

(Sgd.) "GEORGE E. GRAY, *Chief Engineer.*"

On motion, duly seconded, the communication was received and ordered to be placed on file.

The following resolution was offered by David D. Colton, and adopted by a unanimous vote:

Whereas the Western Development Company has completed 140 miles under its contract of the date of February 2nd, 1875, for the construction of the Southern Pacific Railroad, and in accordance with said contract is entitled to receive from this company five million and forty thousand dollars in the first-mortgage bonds of the company and also five million and forty thousand dollars in full paid shares of its capital stock as payment therefor:

Therefore resolved, That the said 140 miles of railroad are hereby accepted, and the president and secretary are hereby authorized and directed to issue to said Western Development Company the said bonds and stock, in accordance with said contract, taking a proper voucher therefor on account.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT, *Sec'ty.*

497 (Extract.)

DIRECTORS' MEETING,
August 14*th*, 1876.

A meeting of the newly elected directors of the Southern Pacific Railroad Company was held at the office of the company on Monday, August 14th, 1876, at 3 o'clock p. m., pursuant to the call of the president.

Present: Directors Chas. Crocker, David D. Colton, H. M. Newhall, E. H. Miller, jr., N. T. Smith, and J. L. Willcutt; President Chas. Crocker presiding.

Absent: Director Robert Robinson.

The secretary presented the certified returns of the annual election (as recorded on pages 253 and 254 of these minutes), whereupon, on motion of N. T. Smith, duly seconded, the board proceeded to the election of officers for the ensuing year, with the following result: Chas. Crocker was elected president, David D. Colton was elected vice-president, N. T. Smith was elected treasurer, J. L. Willcutt was elected secretary, and upon the presentation and acceptance of the official bonds of the said treasurer and the said secretary it was declared that the board was fully organized and ready for the transaction of business.

The secretary reported having filed copies of articles of association, amalgamation, and consolidation in the counties of San Francisco, San Mateo, Santa Clara, San Benito, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Los Angeles, Kern, Fresno, Tulare, San Bernardino, San Diego, and Ventura, in accordance with section 299 of the civil code; also the filing with the "board of transportation commission-
498 ers," and the "secretary of state," and in the counties of San Francisco, San Mateo, Santa Clara, San Benito, Santa Cruz, Monterey, Los Angeles, Kern, Tulare, San Bernardino, and San Diego of "the tariffs, rates of freight, passage money, commutation rates and charges, together with copies of all rules, regulations, and instructions to employees concerning the carriage of persons and merchandise, under which the road was being operated on the first day of January, 1876," in accordance with the requirements of sec. 6, chapter 1, of the new railroad law, known as the O'Connor bill.

* * * * * * *

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT, *Sec'ty.*

(Extract.)

DIRECTORS' MEETING,
October 11*th*, 1876.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Wednesday, the 11th day of October, A. D. 1876, at one o'clock p. m., pursuant to the by-laws.

Present: Directors David D. Colton, E. H. Miller, jr., H. M. Newhall, N. T. Smith, and J. L. Willcutt; Vice-President David D. Colton presiding.

Absent: Directors Chas. Crocker and Robert Robinson.

499 * * * * * * *

The following resolution was offered by J. L. Willcutt and adopted by a unanimous vote:

Resolved, That the line of the railroad as it has been surveyed and laid out on maps, described as follows: "Commencing at Goshen at the initial point of section No. three (3) of the Southern Pacific Railroad (said point of commencement being in the northwest quarter (NW. ¼) of section nineteen (19), township eighteen (18) south, range twenty-four (24) east, Mount Diablo base and meridian), running thence in a westerly direction, and ending at the termination of the twentieth (20th) mile therefrom in the northeast quarter (NE. ¼) of section two (2), township nineteen (19) south, range twenty (20) east, Mount Diablo base and meridian.

Commencing at the end of section number eight of the Southern Pacific Railroad (said point of commencement being in the northeast quarter (NE. ¼) of section two (2), township nineteen (19) south, range twenty (20) east, Mount Diablo base and meridian), running thence in a southwesterly direction, and ending at the termination of the twentieth (20) mile therefrom in the northwest quarter (NW. ¼) of section eleven (11), township twenty (20) south, range seventeen (17) east, Mount Diablo base and meridian.

Commencing at the end of section No. seven (7) of said railroad (map F) at the end of the one hundredth (100) mile on the line of the said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley Branch of the Central Pacific Railroad (said point

500 of commencement being in the southeast quarter (SE. ¼) of section thirty-three (33), township thirty (30) south, range thirty-one (31) east, Mount Diablo base and meridian), running thence in a southeasterly direction, and ending at the termination of the twentieth (20th) mile therefrom in the northeast quarter (NE. ¼) of section nineteen (19), township thirty-two (32) south, range thirty-three (33) east, Mount Diablo base and meridian.

Commencing at the end of section number ten of said railroad, delineated on map I, at the end of the one hundred and twentieth (120th) mile on the line of the said railroad south from the intersection of the Southern Pacific Railroad with the San Joaquin Valley branch of the Central Pacific Railroad (said point of commencement being in the northeast quarter (NE. ¼) of section nineteen, township thirty-two (32) south, range thirty-three (33) east, Mount Diablo base and meridian, running thence in a southeasterly direction, and ending at the termination of the twenty-first and sixty-six one-hundredths ($21\frac{66}{100}$) mile therefrom in the northeast quarter (NE. ¼) of section seventeen (17), township eleven (11) north, range twelve (12) west, San Bernardino base and meridian.

Commencing at the initial point of section number one (1) of said railroad, as delineated on map AA, said point being in the northwest quarter (NW. ¼) of section three (3), township two (2) north, range fifteen (15) west, San Bernardino base and meridian, running thence northerly and

ending at the termination of the seventy-eighth and fifty-nine
501 one-hundredths ($78\frac{59}{100}$) mile therefrom at the terminal point of section number eleven (11) of the Southern Pacific Railroad, authorized by the eighteenth section of the Atlantic and Pacific Railroad act, approved July 27th, 1866, and amendments thereto, as delineated on may J of said railroad, said point being in the northeast quarter (NE. ¼) of section seventeen (17), township eleven (11) north, range twelve (12) west, San Bernardino base and meridian.

Be, and the same is hereby, adopted as the route of said railroad between the several points named.

A communication was received from the Western Development Company, reading as follows:

"SAN FRANCISCO, *October 6th*, 1876.

"*To the Honorable Board of Directors, Southern Pacific Railroad:*

"GENTLEMEN: Enclosed I hand you Chief Engineer Graves' estimate of completed road on the W. D. Co.'s contract with your company, and would respectfully request that the bonds and stock due for the same be issued to this company at your earliest convenience.

The statement of our account is as follows, viz:

Total amount of road built, in miles		246.60
For which we are entitled to, in bonds	8,877,600	
Do., in stock	8,877,600	
	17,755,200	
Have received for 140 miles road built, in bonds	$5,040,000	
In stock	5,040,000	10,080,000
Balance due for 106.60 miles, bonds and stock		7,675,200

502 Yours, respectfully,

"F. S. DOUTY, *Pres't.*"

"SAN FRANCISCO, *July* 31, 1876.

"*President Western Development Company:*

"SIR: I submit the following estimate for work done under your contract to grade and equip the railroad of this company:

	Miles.
Grading and equip'ing road from Sumner to end of Section No. 6, Sta. 11,935	6.35
Do, Section No. 7, Sta. 13,008—$12\frac{3}{10}$	20.
Do., " " 8, Sta. 14, 045—$70\frac{3}{10}$	20.
Do., " " 9, Sta. 15, 702—$39\frac{6}{10}$	20.
Do., from section No. 9 section No. one marked AA. first divn	80.25
Do., from Spadra to San Gorgonio, second division	50.
Do., from San Gorgonio to Indian Wells, third division	50.
Total miles	246.60
Deduct estimate March 18th, 1876	140.
Total miles	106.60

"Respectfully submitted.

"GEO. E. GRAY, *Chief Engineer.*"

On motion of E. H. Miller, jr., the communication was received and ordered to be placed on file.

503 The following resolution was offered by E. H. Miller, jr., and, being duly seconded, was adopted by a unanimous vote:

Whereas the Western Development Company has completed one hundred and six $\frac{60}{100}$ ($106\frac{60}{100}$) miles road & telegraph line under its contract of February 2nd, 1875, and in accordance with said contract is entitled to receive as payment therefor seven million six hundred and seventy-five thousand two hundred dollars ($7,675,200) in the stock and bonds of this company (one-half each); therefore, be it

Resolved, that the said $106\frac{60}{100}$ miles of railroad be, and are hereby, accepted, and the president and secretary are hereby authorized and instructed to issue*d* to said Western Development Company the said stock and bonds in accordance with said contract, taking a proper voucher therefor.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT, *Sec't'y.*

DIRECTOR'S MEETING,
June 20, 1877.

A regular meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Wednesday, June 20th, A. D. 1877, at one o'clock p. m., in pursuance of the by-laws.

504 Present: Directors Chas. Crocker, David D. Colton, Robert Robinson, E. H. Miller, jr., H. M. Newhall, N. T. Smith, and J. L. Willcutt.

The following resolution was offered by N. T. Smith, and, being duly seconded, was adopted by a unanimous vote:

Resolved, that the line of the railroad as it has been surveyed and laid out on maps—described as follows:

Commencing at Indio, at the end of section No. three (3) as delineated on map CC, said point of commencement being in the southwest quarter (SW. $\frac{1}{4}$) of section twenty-four (24), township five (5), range seven (7) east, San Bernardino base and meridian, and running thence in a southeasterly direction fifty (50) miles to a point in the southwest quarter (SW. $\frac{1}{4}$) of section twenty-five (25), township ten (10) south, range thirteen (13) east San Bernardino base and meridian.

Commencing at the end of section No. five (5) as delineated on map EE, said point of commencement being in the southwest quarter (SW. $\frac{1}{4}$) of section twenty-five (25), township ten (10) south, range thirteen (13) east, San Bernardino base and meridian, and running thence in a southeasterly direction sixty-eight $\frac{37}{100}$ ($68\frac{37}{100}$) miles to a point in the northeast quarter (NE. $\frac{1}{4}$) of section thirty-five (35), township sixteen (16) south, range twenty-two (22) east, San Bernardino base and meridian—

Be, and the same are hereby, adopted as the route of said railroad between the points named.

505 A communication was received from the Western Development Company, reading as follows:

"SAN FRANCISCO, *May 25th*, 1877.

"*To President and Directors S. P. R. R. Co.:*

"GENTLEMEN: I herewith enclose for your early action the chief engineer's estimate of completed road to date, for the details of which please refer to accompanying bill.

"Yours respectfully,

"F. S. DOUTY, *Prest.*"

"SAN FRANCISCO, *May 25th*, 1877.

"*President Western Development Company:*

"SIR: I submit the following estimate for work done under your contract with this company to grade and equip its railroad:

From Sumner to end of section 6		sta.	11935	.....	6.35
section No. 7	ending	sta.	1300+12.5/10	.....	20
" " 8 (Goshen, vs. Huron.)	"	"	1057+85.6/10	.....	20
" " 9	"	"	2110+13 1/2	.....	20
" " 10	"	"	1404+70.3/10	.....	20
" " 11, Mojave	"	"	15190	.....	21.66
" " 4 (DD) do. to San Fernando	"	"	522+91	.....	78.59
" " 2, (BB) do. Spadra v. San Gorgonio	"	"	5280	.....	50
" " 3, (CC) do. San Gorgonio v. Indio	"	"	7920	.....	50
" " 5 and 6 (EE & FF) Indio v. Colorado River	"	"	14197	.....	118.31
Total miles constructed					404.91
Deduct previous estimate					286.60
Amount of estimate					118.31

"Respectfully yours, etc.,

"GEO. E. GRAY.
"*Chief Engineer.*"

506 On motion of E. H. Miller, jr., the communication was received and ordered to be placed on file.

The following resolution was offered by David D. Colton, and, being duly seconded, was adopted by a unanimous vote:

Whereas, the Western Development Company has completed 118 31/100 miles of railroad and telegraph line under its contract of February 2nd, 1875, and in accordance with said contract is entitled to receive as payment therefor ($8,518,320) eight million five hundred and eighteen thousand three hundred and twenty dollars in the stock and bonds of this company, (one-half each); therefore be it

Resolved, that the said 118 31/100 miles of railroad and telegraph line be and are hereby accepted, and the president and secretary are hereby authorized and instructed to issue to said Western Development Company the said stock and bonds in accordance with said contract, taking a proper voucher therefor.

No further business appearing before the board, and the foregoing minutes having been read and approved, on motion, duly seconded, the meeting adjourned.

J. L. WILLCUTT,
Secretary.

507 DIRECTORS' MEETING,
August 27th, 1875.

A meeting of the board of directors of the Southern Pacific Railroad Company was held at the office of the company on Friday, August 27th, A. D. 1875, at 3 o'clock p. m., pursuant to the call of the president.

Present: Directors Chas. Crocker, David D. Colton, Robert Robinson, E. H. Miller, jr., S. T. Gage, N. T. Smith, and J. L. Willcutt; President Chas. Crocker presiding.

* * * * * * *

On motion of David D. Colton the following preamble and resolution was unanimously adopted:

Whereas by the articles of association, amalgamation, and consolidation between the Southern Pacific Railroad Company and the Los Angeles and San Pedro Railroad Company into this company, made and executed on the 17th day of December, 1874, it was provided, among other matters and things, that the stockholders of said company should severally receive the same number of shares of the capital stock of this company which they held of the capital stock of said companies; and

Whereas at the date of said consolidation the capital stock of said Los Angeles and San Pedro Railroad Company consisted of five hundred thousand dollars, divided into five thousand shares of one hundred dollars each; and

Whereas 2,740 shares of the capital stock of said last-named company, at the date of said consolidation, was owned and held by Leland
508 Stanford, Colis P. Huntington, Charles Crocker, and Mark Hopkins in common; and

Whereas the railroad and appurtenances of said last-named company were out of repair and required a large expenditure of money to improve and repair the same; and

Whereas at the instance and request of said company the said Stanford, Huntington, Crocker, and Hopkins did make said improvements and repairs at their own cost and charge, and therein did expend large sums of money, and upon the like instance and request did expend other large sums of money in paying off and satisfying the indebtedness of said company; and

Whereas the said Stanford, Huntington, Crocker, and Hopkins are the owners and holders of the bonded indebtedness of said Los Angeles and San Pedro Railroad Company which existed at the time of said consolidation, to the amount of three hundred thousand dollars in six hundred bonds for the sum of five hundred dollars each, bearing ten per cent interest, which bonds it has been heretofore deemed and considered advisable to call in and cancel and to issue in lieu thereof and deliver to the

holders thereof three hundred of the first-mortgage bonds of this company for the sum of one thousand dollars each, bearing six per cent interest:

Now, therefore, in consideration of the premises,

It is ordered, 1st, that 2,740 shares of the capital stock of this company be issued in the usual form and delivered to said Stanford, Huntington, Crocker, and Hopkins pursuant to the aforesaid condition of said
509 articles of consolidation, in place of the stock so held as aforesaid by them in the said Los Angeles and San Pedro Railroad Company.

2nd. That first-mortgage bonds of this company for the sum of one thousand dollars each to the number of five hundred be delivered to said Stanford, Huntington, Crocker, and Hopkins in payment and satisfaction of their said claims for monies expended by them in making the aforesaid repairs and improvements, and in paying off and satisfying the aforesaid indebtedness of said Los Angeles and San Pedro Railroad Company, and that the usual vouchers be taken therefor; and

3rd. That first-mortgage bonds of this company for the sum of one thousand dollars each to the number of three hundred be delivered to said Stanford, Huntington, Crocker, and Hopkins in exchange for the aforesaid six hundred bonds of said Los Angeles and San Pedro Railroad Company so as aforesaid held by them, upon the surrender thereof; and when said last-named bonds shall have been so surrendered, that they be cancelled by defacing the seal of said company, punching the signatures of the president and secretary, and drawing a red line through each of the coupons annexed thereto.

No further business appearing before the board and *and* the foregoing minutes having been read and approved, on motion the meeting adjourned.

J. L. WILLCUTT,
Secretary.

510 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Chas. T. Stanley, a notary public in and for said city and county of San Francisco, State of California, duly commissioned and sworn, do hereby certify and declare that the foregoing document, consisting of 45 pages, and marked Plff's Ex. 23, C. T. S., N. P., is a full, true, and correct copy in every particular of the minutes of certain meetings and extracts of the minutes of certain meetings of the board of directors of the Southern Pacific Railroad Company, as taken from the records of said Southern Pacific Railroad Company, contained in a book endorsed, "Record A, Southern Pacific R. R. Co.," and which said copy was by me carefully compared with the original matter contained in said record book under the dates as set forth in said copy.

Witness my hand and official seal this 20th day of December, A. D. 1890.

[SEAL.]

CHAS. T. STANLEY,
Notary Public and Examiner.

513 *By-laws of the Southern Pacific Railroad Company.*

Adopted December 19th, 1874.

Annual meetings of stockholders. Place. Time of.

SECTION 1. The annual meeting of the stockholders of this company shall be held at the principal place of business of the company, on the second Monday of August in each year, or at such other time as shall be appointed by a resolution of the board of directors, at which an election for seven directors shall be held, to serve for the ensuing year, and until their successors are elected. Said election shall commence and terminate at hours designated by the board of directors and named in the notice calling the meeting.

Election of directors. Time of election.

Elections. Officers to preside.

SECTION 2. The president, or in his absence the vice-president of the company, together with one director and one stockholder who is not at the time a director, both to be chosen and appointed by the board of directors for that purpose, shall act as the judges of election, receive, count, and canvass the votes, and declare the result without delay. The secretary shall be tally clerk, and shall keep a regular tally list of all votes cast at said election, and preserve the same in his office. The vote for the election of directors shall be taken by ballot, and each voter shall endorse on his ballot his name and the number of votes cast by him. The said judges of election and secretary shall, at the close of such election, certify the result thereof to the board of directors. In the absence of any officer of election his place shall be filled by the stockholders present at the opening of the election.

Judges of election. 514 Tally clerk. Voters and number of votes. Vote by ballot. Election of directors.

Meeting of stockholders. Who to vote.

SECTION 3. At all meetings of the stockholders absent members may vote by proxy duly authorized in writing, signed by the stockholder granting them, and they shall be filed with the secretary. It shall be the duty of the secretary, previous to every meeting thereof, to make an alphabetical list of all stockholders, with the number of votes each is entitled to cast set opposite his or her name, and have the same present at such meeting for the use of the officers thereof.

List of voters.

Office of the company. Fiscal year.

SECTION 4. The office of the company and of the president, secretary, treasurer, and chief engineer, with the books and papers thereto belonging, shall be kept in the city of San Francisco. The fiscal year of the company shall commence on the first day of July and terminate on the last day of June in each year, and shall be divided into four quarters terminating on the last days of September, December, March, and June, respectively.

515

Directors' meeting. Quorum. Special meetings.

SECTION 5. The regular monthly meetings of the board of directors shall be held on the second Tuesday of each month, at two o'clock in the afternoon, at the office of the company, unless otherwise specially directed by the board, and four or more of the directors shall constitute a quorum at all meetings for the transaction of business. Special meetings may at any time be called by the president or any three members of

the board, to convene at such time and place as may be appointed, but it shall require a majority of the whole board to adopt any measure.

Election of officers by directors.

SECTION 6. There shall be elected by the directors at their first meeting after the annual election of directors, which shall be within five days thereafter, or at such subsequent
516 meeting of the board as said election may be adjourned to, from among their number a president, a vice-president, who shall exercise all the powers of the president during his absence, and a treasurer; and also a secretary, who need not necessarily be a director, who shall hold their offices for the term of one year, and until their successors are elected and qualified, unless previously removed, and who shall receive such salaries as may be allowed by the board of directors.

Term of office.

Secretary; his duties.

SECTION 7. The secretary of the company shall perform the duties prescribed by statutes, and shall make out a quarterly and an annual statement and balance sheet at the end of each quarter and year, up to and including the last days of each of said quarters and year, showing the financial condition of the company at each of said periods, and lay the same before the board at the next regular meeting after the expiration of said quarter and year, and perform such other official duties as may be required of him by the board of directors.

Stock certificates.
When issued.
Form.
How signed.
What to contain.
Certificate book.
Entry in.

SECTION 8. Certificates of stock shall be issued only for fully paid stock, and shall be of such form and device as the board of directors shall determine, and each certificate shall be signed by the president and
517 secretary, and express on its face its number, date of issue, the number of shares for which, and the name of the person to whom it is issued. The certificate book shall contain a margin, on which shall be entered the number, date, number of shares, and the name of the shareholder expressed in the corresponding certificate. The surrendered certificate shall in all cases be canceled by the secretary before issuing a new one in lieu thereof. In all cases where a certificate of stock shall have been issued, no transfer of such stock shall be made on the "stock transfer book" until such certificates shall have been returned to the company, and in case of the alleged loss or destruction of a certificate of stock, due proof of such loss or destruction shall be made, and a sufficient bond of indemnity against any loss or damage the company may sustain should said certificate afterwards reappear shall be executed to the company and approved by the board of directors before a duplicate thereof shall be issued and before any transfer of such stock shall be entered on the stock transfer book.

Certificates to be returned.

Proof of loss.

Indemnity.

SECTION 9. These by-laws may be amended or suspended at any time by the board of directors.

518 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Chas. T. Stanley, a notary public in and for said city and county of San Francisco, State of California, duly commissioned and sworn, do

hereby certify and declare that the annexed document marked "Plff's Ex. 23a, being the by-laws of the Southern Pacific Railroad Company, is a full, true, and correct copy of the original by-laws of said company as taken from the record book, endorsed "Record A, Southern Pacific R. R. Co.," and which said copy of the by-laws was by me carefully compared with the said original by-laws contained in said record book and adopted at the meeting of the board of directors of said company held on the 19th day of December, 1874.

Witness my hand and official seal this 20th day of December, A. D. 1890.

[SEAL.]

CHAS. T. STANLEY,
Notary Public and Examiner.

704 EXHIBIT 41.

In the circuit court of the United States, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY, defendant.
} Deposition. (C. C. P. Sec. 2019.)

Be it remembered, that pursuant to the stipulation hereunto annexed, and on the 24th day of November, 1890, at the office of the S. P. R. R. Co., in the city, county of San Francisco, State of California, before me, Clement Bennett, a notary public in and for said city and county of San Francisco, duly appointed and commissioned to administer oaths, &c., personally appeared Jerome Madden, a witness produced on behalf of the defendants in the above-entitled action, now pending in the said court, who, being first by me duly sworn, was then and there examined and interrogated by Joseph D. Redding, esq., of counsel for the said defendant, and by Joseph H. Call, esq., of counsel for the said plaintiff, and testifies as follows:

705 In the circuit court of the United States, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY et al., defendants.
} Two cases, Nos. 177 and 178.

It is hereby stipulated and agreed by and between the respective parties to the above-entitled cause that the deposition and testimony of Jerome Madden be taken orally before Clement Bennett, a notary public, at his office, No. 434 California street, San Francisco, or at such place as it may be adjourned to on the 24th day of November, 1890, at 10 o'clock a. m., and continuing from time to time thereafter until completed; that the testimony may be written down in shorthand by a shorthand reporter, and thereafter written out in typewriting, and after being so written out in typewriting may be read to and corrected by the witness, and that said deposition and testimony shall be taken, read, and used in evidence in said

cause with the same effect as if taken by an examiner pursuant to the laws of Congress and rules in equity of the Supreme Court, but without
706 objection or exception to the time, place, or manner of taking the same and the form of the questions, unless noted at the time.

It is furthermore stipulated that the time in which testimony may be taken by both parties shall be continued so as to include the rule day in January, 1891.

JOSHEPH H. CALL,
Solicitor for Plaintiff.
JOSEPH D. REDDING,
p. W.,
Solicitor for Defendant, Southern Pacific Railroad Company.

Dated San Francisco, the 24th day of November, 1890.

707 In the circuit court of the United States, southern district of California.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* SOUTHERN PACIFIC RAILROAD COMPANY ET al., defendants.	Two cases; Nos. 177 and 178.

(By agreement of counsel herein the taking of testimony under the annexed stipulation was adjourned from the office of Clement Bennett, 434 California street, to the offices of the Southern Pacific Railroad Company, corner of Fourth and Townsend streets, in the city and county of San Francisco, California.)

JEROME MADDEN, a witness on behalf of the respondents, after being first duly sworn, testified as follows:

Direct examination by Mr. REDDING:

Q. 1. Mr. Madden, what is your occupation, residence, and business address?

A. My occupation is land agent of the Southern Pacific Railroad
708 Company; my residence, San Francisco; my address is at that place, railroad building, Fourth and Townsend streets.

Q. 2. How long have you been the duly appointed land agent of the Southern Pacific Railroad Company?

A. I was appointed land agent of the Southern Pacific Railroad Company on March 10th, 1876.

Q. 3. What position, if any, did you occupy in the employ of that company prior thereto?

A. I was the deputy land agent before that time, from the organization of the land office up to the time of my appointment as land agent.

Q. 4. As such deputy land agent and as such land agent have you had the custody and charge of the documents and various papers in the land department of the Southern Pacific Railroad Company?

A. I have had charge of all the documents and papers since I have been land agent. Previous to that time I took care of them in my capacity as deputy land agent.

Q. 5. Since your employ as land agent of the Southern Pacific Railroad Company have you had your employment changed in any way; that is to say, have you been employed by any subsequent company to your knowledge of the same name?

Mr. CALL. Question objected to as incompetent, irrelevant, and immaterial.

A. I have never been employed by any company except the Southern Pacific Railroad Company since I first came into its employ, into its service.

709 (Mr. REDDING.) Q. 6. Have you had any correspondence of an official character as land agent of the Southern Pacific Railroad Company with any department of the Government of the United States?

Mr. CALL. Same objection.

A. Yes, sir.

(Mr. REDDING.) Q. 7. Has that continued; and, if so, between what years?

Mr. CALL. Same objection.

A. In my official capacity as land agent I have entered into communication with the Department of the Interior at more or less intervals ever since I was appointed land agent.

(Mr. REDDING.) Q. 8. Up to the present time?

A. Up to the present time.

Q. 9. The land grant made by Congress under date of March 3rd, 1871, extends between what points in the State of California?

A. From Mojave by way of Newhall and Los Angeles, Colton to Fort Yuma.

Q. 10. Have any patents for lands lying within the granted limits of this grant of March 3rd, 1871, been received by you as land agent from the Government of the United States?

A. Quite a number of them.

Q. 11. What is the date, to the best of your remembrance, or what year, that the last patents were received or patent was received by you?

A. The very last?

Q. 12. No, sir; anything that you remember of recent dates.

710 A. My memory is that the last, except one for 640 acres, was received in 1881. What the date of the one for 640 acres is I can not remember at the present time.

Q. 13. Do you know of your own knowledge that patents for these lands have been received by you from the Government of the United States since the year 1881?

Mr. CALL. Objected to as incompetent, irrelevant, and immaterial.

A. Yes, sir.

(Mr. REDDING.) Q. 14. Since the year 1882?

Mr. CALL. Same objection.

A. Yes, sir.

(Mr. REDDING.) Q. 15. Have you ever been over the Southern Pacific Railroad Company from Tehachapi by way of Los Angeles to Fort Yuma?

Mr. CALL. Objected to as incompetent, irrelevant, and immaterial.

A. Very frequently.

(Mr. REDDING.) Q. 16. By what means of locomotion did you traverse that road?

A. Well, I rode in a railway car that was drawn by a locomotive on a railroad track.

Q. 17. Do you know what the gauge of that railroad track is; is it standard gauge?

A. Four feet (I think) eight and a half, or nine and a half inches—four feet eight and a half inches.

Q. 18. Did you ride in safety and security over that distance?

711 A. No accident has ever occurred to me while going over that or any other railroad.

Q. 19. Was the road in running order, capable of transporting passengers, to your own knowledge?

A. Yes, sir; the road was in perfect order for passenger travel, and passenger and freight travel.

Q. 20. Have you ever seen that road used for postal or military purposes or for the transportation of munitions of war or public stores?

Mr. CALL. Same objection.

A. I have seen bodies of soldiers on the cars on two or three occasions, going from San Francisco to Arizona, and also I have seen United States mails in cars; and with regard to the munitions of war, I can not say anything about that, because I never observed them.

(Mr. REDDING.) Q. 21. Have you as land agent any reports to make to any Department of the Government for the benefit of the body corporate of the Southern Pacific Railroad Company?

A. Not directly; I have indirectly. I make them to the secretary of the Southern Pacific Railroad Company, who embodies them in his report and transmits them to the proper person.

Q. 22. Do you know whether there is recited in any of the deeds, forms of contracts, or other written instruments between the Southern Pacific Railroad Company and purchasers of its lands, the fact that the lands have been mortgaged for the payment of bonds, the lands which are included in this grant of March 3rd, 1871?

712 Mr. CALL. Objected to as incompetent, irrelevant, and immaterial.

A. It is recited in all its deeds.

(Mr. REDDING.) Q. 23. What is the nature of the official communications that you now have with the Interior Department in relation to this land grant of 1871—from time to time?

Mr. CALL. Same objection.

A. Chiefly with regard to the ownership of the lands that are claimed by the railroad company, as to whether or not they are railroad lands or public lands, as to whether they are railroad lands or open to preëmption, homestead, timber-culture, and other forms of entry by the United States, or by persons claiming under the United States.

(Mr. REDDING.) Q. 24. Have you ever received any word from any of the officers of the United States or from Congress, or any official utterance from any source connected with the Government, denying the right of the corporation that employs you to dispose of the lands patented to it?

Mr. CALL. Same objection.

A. I never have.

(Mr. REDDING.) Q. 25. Or for the lands granted to it and upon which there has been no controversy as to whether said land is within or without the exceptions to the grant?

Mr. CALL. Same objection.

713 A. I never have. I would modify that by saying that Mr. Sparks, while he was the agent of the Land Office, made a ruling with regard to indemnity lands.

(Mr. REDDING.) Q. 26. Have you ever had anything from the Government which denies the validity of the grant as to lands not within any exceptions?

A. Not a single word at any time.

Cross-examination by Mr. CALL:

Q. 1. Mr. Madden, do you know that in August, 1873, the Southern Pacific Railroad Company and the Southern Pacific Branch Railroad Company entered into articles of consolidation and amalgamation creating articles of incorporation of a new railroad company?

A. I know it only from having seen a copy of the document. Of my own knowledge I know nothing of it.

Q. 2. Do you know that in the year 1874 that the Southern Pacific Railroad Company, created by the consolidation of 1873, entered into articles of association and consolidation with the San Pedro Railroad Company, creating a new corporation from that date?

A. I do not.

Q. 3. Have you ever seen the articles of association and consolidation of August 12th, 1873?

A. Consolidation of what company?

Q. 4. Articles of association and consolidation of the Southern Pacific Railroad Company with the Southern Pacific Branch Railroad Company?

A. I think I have. I must have seen it. That is, I have seen copies.

714 Q. 5. Have you seen the articles of association and consolidation of the Southern Pacific Railroad Company with the San Pedro Railroad Company made in 1874?

A. I do not remember that I ever have. About the consolidation and amalgamation, and everything of that kind in regard to these companies, is a thing that I have nothing at all to do with. I only know of the matter incidentally; sometimes by seeing the copy and sometimes by hearsay.

Mr. REDDING. Have they anything to do with your business of the Land Department at all?

A. No, sir; not at all.

JEROME MADDEN.

715 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

I, Clement Bennett, a notary public in and for said city and county, do hereby certify that the witness in the foregoing deposition named was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was taken at the time and place mentioned in the annexed stipulation, to wit, at the office of the Southern Pacific Railroad Co., in the city and county of San Francisco, in the State of California, and on the 24th day of November, 1890, between the hours of 10 a. m. and 4 p. m of that day; that said deposition was taken down in

shorthand by me and afterwards reduced to writing, and, when completed, was by me carefully read to said witness, and, being by him corrected, was by him subscribed in my presence.

In witness whereof I have hereunto subscribed my name and affixed my seal of office this 3rd day of December, 1890.

[SEAL.] CLEMENT BENNETT,
Notary Public.

(Endorsed:) U. S. circuit court, southern dist. of Cal., United States of America v. Southern Pacific Railroad Co. No. 177, 178. Master's Exhibit (41). Filed Jan'y 5th, 1891. Chas. L. Batcheller, master and examiner in chancery.

Opened and filed by consent before Chas. L. Batcheller, esq., standing master & examiner in chancery, January 5th, 1891. Wm. M. Van Dyke, clerk.

Filed January 10th, 1891. Wm. Van Dyke, clerk.

716 EXHIBIT 42.

In the circuit court of the United States, ninth circuit, southern district of California.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
SOUTHERN PACIFIC RAILROAD COMPANY ET AL., respondents. } Nos. ——.

Stipulation.

It is hereby stipulated by and between the solicitors and counsel for the respective parties to the above-entitled suit that the certified copy of testimony of Jerome Madden and J. L. Willcutt, taken in consolidated cases, numbered 67, 68, and 69, is herewith introduced in evidence in this cause with the same effect as if the said Jerome Madden and J. L. Willcutt had been duly sworn and testified to the same facts in this cause as in said deposition he has testified to in said consolidated cases, numbered 67, 68, and 69, but it is expressly understood that the same is subject to the objections made as therein set forth; that a true and correct copy of said deposition of Jerome Madden is hereto attached and hereby made a part of this stipulation and that said copy may be, and is hereby, introduced in
717 this cause as a true and correct and sufficient copy of the testimony of said Jerome Madden, taken in said consolidated cases, numbered 67, 68, and 69, and that the same may be, and is hereby, marked "Stipulated Exhibit "42;" and the said deposition of J. L. Willcutt has been heretofore introduced before the master and is marked Master's Ex. No. 39, and the same is hereby referred to and made a part hereof.

JOSEPH H. CALL,
Special Asst. U. S. Atty.
JOSEPH D. REDDING,
P. W.
Solicitor for Respt.

718 *In the circuit court of the United States, ninth circuit, southern district of California.*

THE UNITED STATES OF AMERICA, complainant,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al., respondents.

Deposition of Jerome Madden, a witness called on behalf of the respondents, taken before Charles T. Stanley, a notary public in and for the city and county of San Francisco, State of California, on Thursday, February 13th, 1890, pursuant to the original stipulation signed by the respective solicitors, and by consent of the parties.

Counsel appearing: Joseph H. Call, esq., solicitor for the complainant; Joseph D. Redding, esq., solicitor for the respondents, the Southern Pacific Railroad Company.

719 JEROME MADDEN, pursuant to the annexed stipulation, and by consent of parties being produced as a witness on behalf of respondent, and having been duly sworn, testified as follows:

Mr. REDDING:

Q. What is your name, address, and occupation?

A. Jerome Madden; 1135 Twenty-first street, San Francisco, California; and I am land agent of the Southern Pacific Railroad Company, one of the respondents in this suit.

Q. Do you refer to the Southern Pacific Railroad Company, one of the respondents in case No. 68, before the circuit court, namely, the case you are now testifying in between the United States of America and the Southern Pacific Railroad Company and others?

A. I do.

Q. Are you the land agent of the Southern Pacific Railroad Company?

A. I am.

Q. Have you been duly appointed as such?

A. Yes, sir; I was duly appointed as such on the 10th day of May, 1876, by the board of directors of the Southern Pacific Railroad Company.

Mr. CALL. I admit that Mr. Madden is the duly appointed land agent of the Southern Pacific Railroad Company.

Mr. REDDING:

Q. What are your duties with reference to that office and that employment?

A. I have the charge, management, control, and sale of the Southern Pacific Railroad Company's land.

720 Q. Does that include the land granted under the act of July 27th, 1866?

A. It does.

Q. Does it include the land granted under the act of March 3rd, 1871?

A. It does.

(The complainant objects to the answer as incompetent, immaterial, irrelevant, and as involving a conclusion of law.)

Q. Are you familiar with the terms of those respective land grants?

A. I am quite so.

Q. Do you know whether or not commissioners were appointed by the President of the United States for the purpose of examining the sections of road built from Tehachapa by the way of Los Angeles to the Colorado River, known as the branch line grant and road?

(Objected to by complainant as incompetent, irrelevant, and immaterial, and as involving questions of law, and the opinion of the witness.)

A. I know that they were so appointed.

Q. Do you know whether or not they made any reports to the President?

(Same objection.)

A. Reports of what character?

Q. In reference to the construction of the road?

A. I do.

(Counsel for the respondent, the Southern Pacific Railroad Company, states that he asks these questions preliminary to the production of further proofs on this subject.)

721 Q. Can you produce any documentary evidence, or any written matter, with reference to the report of these commissioners?

A. I can; I have duplicate original reports that they made on that subject in my possession now, here before the notary.

Q. Please produce them before the notary.

A. Here is the first one [producing].

Q. How many have you in your possession now?

(Same objection by the complainant as above stated.)

A. Five.

Q. State seriatim the year for which each report is made.

(Same objection by the complainant as above stated.)

A. The duplicate original report of the first examination for the 50 miles between San Fernando and Spadra is dated April 15th, 1874.

(It is admitted that the duplicate original now offered is a duplicate original, and bears the exemplification and proper seal as such.)

(The complainant objects to the introduction of this report on the ground that it is incompetent, immaterial, and irrelevant, and because it appears that the railroad therein constructed was not constructed by the company to which the grant was made, but the complainant admits that a railroad was constructed at the time therein named in said report.)

Mr. REDDING. I now offer that on behalf of the respondents, the Southern Pacific Railroad Company, as Respondent's Exhibit "AA," now on file in the records of this case at Los Angeles.

(Same objection.)

722 Q. Do you know whether the President accepted this first section of the road as reported upon by the commissioners?

(Same objection.)

A. I do.

Q. From what source did you receive your information, and how did you know that he accepted it?

(Same objection.)

A. From copies of letters from the Commissioner of the General Land Office to the register and receiver of Los Angeles County, which were from time to time sent to the land department of the Southern Pacific Railroad Company.

Mr. REDDING. I suppose you will admit that those letters are true copies?

Mr. CALL. Yes, sir; I make the same objection, but it is admitted they are true copies.

Mr. REDDING. Have you a copy of any of those letters here?

(Same objection.)

A. I have. Here is one that I received a few days ago.

Q. Have you a letter in the documents of your office from the Interior Department stating that the President accepted the first section of the road last referred to?

(Same objection by the complainant, but *but* admits that it is a true copy of the letter received.)

A. I could not say whether there are or not. It is a long time ago, in 1874, since that letter was received. I presume it is on the files of the Southern Pacific Railroad Company's land department, but I have not seen it for a long time.

723 Mr. REDDING. Will you admit the receipt of that letter and the contents of it?

Mr. CALL. The complainant admits that Mr. Madden has such a letter which states that the President accepted the first section of the railroad as built from Tehachapa by the way of Los Angeles, but makes the same objection as above stated.

Mr. REDDING. Were you secretary of the commissioners appointed by the President to report on said road?

(Same objection.)

A. I was. I was secretary of the Commission on the part of the railroad company; that is to say, the railroad company sent me with the Commission when they went to examine the road to take charge of the papers, and in that capacity I have possession of all the papers which have come into my hands concerning it, which are all except the letters of acceptance.

Q. Did you go with the Commission?

(Same objection.)

A. I did.

Q. Did you go over the first section of the road on the railroad cars and on the track?

(Same objection.)

A. I went with the Commission every time, and I went over each section of the railroad as it was completed.

Q. What did you see the commissioners do?

(Same objection.)

A. I saw them examining the road, taking notes of it, referring to papers, and doing all things that an examining commission would naturally do under the circumstances.

724 Q. Were they on a portion of the earth's surface between Tehachapa and Los Angeles when you were there at any time?

(Same objection.)

A. The first section they examined was from San Fernando to Spadra, which commences at the north of Los Angeles and ends at a point beyond Los Angeles on the line of the road.

Q. Did you go over that ground in a car running by wheels on the railroad track?

(Same objection.)

A. I did.

Q. Was it drawn and worked by a locomotive using steam?

A. It was.

Q. What company were you in the employ of at this time?

A. The Southern Pacific Railroad Company.

Q. Are you still in the employment of that company?

A. I am.

Q. Is that company the respondent in the suit that you are now testifying in?

A. It is.

Q. Have you the report of the Commission on the second section of the road?

A. I have.

Q. What is the date of it?

(Same objection.)

A. The duplicate original report of the second examination of the commissioners of the 50 miles from Spadra to San Gorgonio Summit is dated October 21st, 1875.

725 (It is admitted that the paper is a duplicate original report.)

Mr. REDDING. The respondent, the Southern Pacific Railroad Company, hereby offers this duplicate original report of the commissioners in evidence, and it is marked Respondent's Exhibit BB.

(Objected to by complainant as incompetent, immaterial, irrelevant, and for the further reason that it appears from the evidence adduced that the railroad which has been constructed, and mentioned in said report, was not constructed by the corporation named in the act of Congress of March 3rd, 1871, nor by any company therein authorized to construct it, and such report is made without authority, and is void.

It is admitted that the railroad which was constructed between Tehachapa Pass and the Colorado River, by way of Los Angeles, is in fact a standard gauge, and of the same gauge that was provided in the act of Congress of July 27th, 1866.)

Q. Do you know whether or not the second report was accepted by the President?

A. I do; in the same way that I have already stated with regard to the report of the first section of the road that was examined.

(Complainant makes the same admission and same objection as to the previous letter.)

726 Q. Were you secretary of the Commission at the time the second report was made?

A. I was secretary of the Commission, as explained before, all the time; that is, I went on behalf of the railroad company.

Q. Have you a report of the commissioners on the third section of the road?

(Same objection.)

A. I have.

Q. What is the date of it?

(Same objection.)

A. The duplicate original report of the commissioners for the third examination of 50 miles from San Gorgonio Summit to Indio is dated June 22nd, 1876. That was accepted by the President July 21st, 1876.

(Complainant objects to the statement of the witness that it was accepted by the President, as not being the best evidence and as being incompetent and immaterial.)

Q. Do you know that this report was accepted by the President?

(Same objection as before stated.)

A. I do; my information being derived from a letter from the Commissioner of the General Land Office to the register and receiver in Los Angeles, in the same way as stated before.

Mr. REDDING. The respondent, the Southern Pacific Railroad Company, hereby offers this duplicate original report of the commis-
727 sioners in evidence, and it is marked Respondent's Exhibit CC.

(The complainant makes the same admission and the same objections in reference to this alleged report and letter as to the previous one.

It is stipulated that the reports of the remaining sections of the road are hereby offered and marked Respondent's Exhibit DD, with the same admissions and same objections by the complainant.)

Mr. CALL. I will admit that the commissioners named in the above alleged reports received appointments in due form of law, but I do not admit that the President was authorized to appoint them, and I deny the legality of their appointment, and I do not admit that they were authorized to accept any railroad or any section of any railroad.

Mr. REDDING. The respondent, the Southern Pacific Railroad Company, hereby offers the duplicate original report of the commissioners in evidence and marked Respondent's Exhibit EE, being the report on the last section of the road from Indio to Yuma.

(Same admission and same objection.)

Q. When was the road finished?

A. I could not give you the exact date when it was finished, but it was finished previous to December the 6th, 1877. If you wish to have the date I can procure it for you at the office of the chief engineer of the company.

Q. No; that is sufficient. Have you ridden over this road.

Mr. CALL. You mean when the last section was finished?

A. Yes.

728 Q. When was the first section finished?

A. It was finished in the fall or winter of 1873, but it was not examined by the commissioners until April the 15th, 1874.

Mr. REDDING. Have you ridden over this road from Tehachapa by way of Los Angeles to Fort Yuma?

A. I have, very often.

Q. Have you done so in a continuous manner from 1877 down to the present time?

A. Several times.

Q. When was the last time you went to Fort Yuma?

A. About four or five years ago.

Q. Did you go all the way by rail from Tehachapa?

A. To Fort Yuma?

Q. Yes; to Fort Yuma.

A. I did.

Q. By the way of Los Angeles?

A. By the way of Los Angeles.

Q. Riding on the cars?

A. I road on the cars all the way.

Q. Was this the line of road that was examined by the commissioners as you have above stated?

A. It was.

Q. Were you carried by steam power—by a locomotive? What was the power that carried you?

A. The cars were drawn sometimes by one locomotive and sometimes by two locomotives.

Q. Do you know if the cars were of the standard gauge, as
729 mentioned in the act of Congress of July 27th, 1866?

A. I do.

Q. And the locomotive also?

A. The locomotive also.

Q. Do you know whether the road that you have just testified to as having ridden over it is now in operation?

A. It has been continuously in operation since it was finished in 1877, except during periods of washouts and accidents—that is, during periods of washouts or obstructions.

Q. How long have you been connected with the land department of the Southern Pacific Railroad Company?

A. I have been connected with the land department of the Southern Pacific Railroad Company since May, 1871.

Q. How long have you been the land agent?

A. I have been the land agent of the company since the 10th of May, 1876.

Q. Are you still the land agent of that company.

A. I have been continuously since that time, and I am now, the land agent of the Southern Pacific Railroad Company.

Q. Is the company that you are now land agent for in 1890 the same company for which you were working in July, 1871?

(Objected to by the complainant as incompetent, immaterial, irrelevant, and as calling for the conclusion of the witness on a question of law, and for the further reason that the facts have been fully shown, and the articles of incorporation have been produced here in evidence.)

A. It is the same company, so far as I know. I have never
730 been notified of any change it it.

Q. In the course of your connection with the land department of the Southern Pacific Railroad Company, and as land agent, have you formulated and kept and exercised custody over any books or papers with reference to the land grants made by Congress, on July 27th, 1866; and March 3rd, 1871?

(Same objection.)

A. I have. I have the charge, custody, and control of all the books, papers, records, and all documents connected, with the land department of the Southern Pacific Railroad Company, from the beginning to the present time.

Q. From the beginning to the present time what was the name of the company for which you acted as land agent and as employé?

(Same objection.)

A. The Southern Pacific Railroad Company.

Q. Has there been any change in the method or title, name or style of the documents and books kept by you?

(Same objection.)

A. There never has been.

Q. Has there been any change in the certificate of your employment by the Southern Pacific Railroad Company from the beginning to the present?

(Same objection.)

A. There has not.

Q. Have you corresponded, in the capacity of land agent of the Southern Pacific Railroad Company, with the United States of America
731 and the various offices thereof situated at Washington.

(Objected to as incompetent, immaterial, and irrelevant.)

A. I have very often. It is an occurrence which happens every week.

Q. Have patents been issued by the United States of America, the complainant in this suit, to the Southern Pacific Railroad Company, the repondent in this suit for lands within the grants by Congress of the above dates?

A. They have.

Q. Did they come to you?

A. I have them now in my possession, except I believe one which was filed in a case in court as an exhibit.

(Counsel for complainant waives objection to the answer as being secondary evidence.)

Q. Have you as custodian of the records of the Southern Pacific Railroad Company's land department and as the land agent thereof, entered into contracts with persons for the purpose of purchasing from the Southern Pacific Railroad Company lands within the grants to said company?

(Objected to as incompetent, irrelevant, and immaterial.)

A. I have very frequently. There are now over 10,000 contracts of that kind issued.

(Counsel for complainant moves to strike out the answer as not responsive, and as incompetent, immaterial, and irrelevant.)

732 Q. How many contracts are there now extant under th se grants?

(Same objection.)

A. Between 10,000 and 11,000.

Q. What was the date of the first contract entered into between the Southern Pacific Railroad Company and the purchaser for those lands?

(Same objection.)

A. In addition to those 10,000 or 11,000 contracts that I have mentioned there were some that were issued in 1867 and 1868, previous to my connection with the land department, some 40 or 50 of them.

Q. Can you produce the original or duplicate original of one of the contracts between the Southern Pacific Railroad Company in 1867 and a purchaser?

A. Here is one dated August 10th, 1867. (Producing.)

Mr. REDDING. The respondent hereby offers this contract as Respondent's Exhibit F F.

(It is admitted it is the document it purports to be so far as the form is concerned, but it is objected to by complainants as incompetent, immaterial, and irrelevant.

It is stipulated that the respondent can substitute a true copy of Exhibit F F in lieu of said exhibit and return the exhibit to the files of the land department of the Southern Pacific Railroad Company. It is also stipulated that upon the clerk of the court making certified copies
733 of the reports of the commissioners heretofore introduced by the respondent, and marked Exhibits A A, B B, C C, D D, and E E, that the originals thereof, if desired, can be returned to the owner.)

Q. In all of the contracts, deeds, and papers, signed by you in connection with the land grants by the acts of Congress of July 27th, 1868, and March 3rd, 1871, what was your official signature?

(Same objection.)

A. Jerome Madden, land agent, Southern Pacific Railroad Company. Sometimes Southern Pacific Railroad Company, by Jerome Madden, its land agent.

Q. Have you ever received any word, instructions, or notification from the directors or stockholders of the respondent herein to change that signature or to sign it in any other capacity than that first given and authorized to you?

A. I never have.

Cross-examination by Mr. CALL:

Referring to the contracts for the sale of land which you have made, have a good many of those been made lately, within the last two or three years?

A. Within the last three years I suppose probably 4,000 of them have been made, to the best of my memory.

Q. Can you furnish a copy of a contract that you have made, a form, within the last three years?

A. Yes, sir.

Q. I should like to have you do so and attach it to your deposition.

734 A. Certainly; with a great deal of pleasure. What date; three years ago?

Q. The form used in the last three years.

A. Yes; there were two forms.

Q. Attach a copy of each (marked Complainant's Exhibit X–1 and 2).

Redirect examination by Mr. REDDING:

Q. Mr. Madden, have you, under instructions from the board of directors or from the various authorities of the Southern Pacific Railroad Company, instituted suits by your attorney for the Southern Pacific Railroad Company, and defended suits for them?

(Objected to as incompetent, immaterial, and irrelevant.)

A. I have; very many of them.

Q. When you have instructed your attorney and attorneys to bring suits, on whose behalf have you asked them to proceed?

A. Always on behalf of the Southern Pacific Railroad Company.

Q. Is that the Southern Pacific Railroad Company, the respondent in this case?

(Same objection.)

A. It is.

Q. I now refer you to Volume 127 of the United States Supreme Court Reports, of the October term, 1887, page 1, which reads as follows: "Cases adjudged in the Supreme Court of the United States at October term, 1887: California vs. Central Pacific Railroad Company;
735 The same vs. The Southern Pacific Railroad Company, and the same against other railroad companies." These, as the cases show by reference, are the suits brought by the State of California for alleged delinquent taxes. Are you familiar with the case of the State of California vs. The Southern Pacific Railroad Company, therein stated and named?

A. I have read the decision.

Q. Do you know whether or not, as a fact, the Southern Pacific Railroad Company, the respondent in that case, is the Southern Pacific Railroad Company, the respondent in this case?

(Objected to as incompetent, immaterial, and irrelevant.)

A. I know that it is the same company.

Q. When you have defended or assisted in the defense of suits brought against the Southern Pacific Railroad Company, has it been the same Southern Pacific Railroad Company for which you have been and are the land agent?

(Objected to by the complainant as incompetent, immaterial, and irrelevant, and as calling for a conclusion of law, and for the further reason that the several articles of incorporation, and business of the companies with respect thereto, has been fully shown and is now in evidence.)

A. It is the same company.

Q. Have you ever acted as land agent for any other Southern Pacific Railroad Company than the one that you are now acting for?

A. I never have.

Q. Have you ever received any more than one appointment as land agent for the Southern Pacific Railroad Company?

736 A. I have not. I have never received but one appointment.

Q. Have you acted under that appointment from its reception down to the present time?

A. I am still acting under the appointment which I received on May 10th, 1876.

Q. Had you been in the employ of that company prior to that time; the company that you received the appointment as land agent from?

(Same objection as before stated.)

A. I entered the service of the Central Pacific Railroad Company on October 6th, 1866. In 1871 I assisted in the business of the land department of the Southern Pacific Railroad Company. On April 1st, 1875, I regularly entered the service of the Southern Pacific Railroad Company, and on May 10th, 1876, I was appointed its land agent.

Q. Were you employed prior to your appointment as land agent in matters with reference to its land and land grants?

A. From 1871 to 1876 I was employed all the time about land matters.

Q. Were you employed about the lands coming to the Southern Pacific Railroad Company under the acts of Congress above enumerated?

(Same objection.)

A. I was employed in relation to the lands of the Southern Pacific Railroad Company that were granted to it by the acts of July 27, 1866, and March 3, 1871.

737 Q. Do you know as a fact whether or not the company for which you are now working, namely, the respondents in this case, was the company that received those land grants?

(Objected to by the complainant as incompetent, immaterial, and irrelevant, and as calling for the conclusion of the witness on questions of law, and for the further reason that the facts are fully shown in evidence by the articles of incorporation and by other evidence which fully covers the matter inquired into.)

A. I always thought it was the same company. The patents were issued by the Interior Department and came regularly to the office in the name of the Southern Pacific Railroad Company.

JEROME MADDEN.

Subscribed and sworn to before me by said Jerome Madden, in the city and county of San Francisco, this 15th day of February, A. D. 1890.

[SEAL.] CHAS. T. STANLEY,
Notary Public in and for the City and County of San Francisco, State of California.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States for the southern district of California, do hereby certify the foregoing to be a full, true, and correct copy of the deposition of Jerome Madden, forming part of master's Exhibit 101, in the cause entitled the United States of America, complainants, vs. The Southern Pacific Railroad

738 Company et al., defendants, Nos. 67, 68, and 69, consolidated, filed in my office March 20th, 1890, and now remaining on file and of record there.

Attest my hand and seal of said circuit court this 12th day of January, A. D. 1891.

[SEAL.] WM. M. VAN DYKE,
Clerk.

(Endorsed:) Nos. 177, 178. Circuit court of the United States, ninth circuit, southern district of California. United States of America vs. S. P. R. R. Co. et al. Certified copy of deposition of Jerome Madden. Filed January 12th, 1891. Wm. M. Van Dyke, clerk. Joseph D. Redding, solicitor for resp'd't, 33–37 Chronicle building, San Francisco, Cal.

739 *Exhibit for Respondents.*

[F. (4–207.) M. N. W. J. D.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 4th, 1891.

I, Lewis A. Groff, Commissioner of the General Land Office, do hereby certify that the annexed copy of letter dated March 9, 1872, from the Secretary of the Interior to the Commissioner of the General Land Office, is a true and literal exemplification of the original on file in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[SEAL.] LEWIS A. GROFF,
Commissioner of General Land Office.

(18236 b–1 m.)

740 DEPARTMENT OF THE INTERIOR,
Washington, D. C., 9 M'ch, 1872.

SIR: I transmit herewith, for appropriate action, four maps of the preliminary location of portions of the Atlantic & Pacific Railroad, as follows:

1st. From San Francisco to San Miguel Mission, Cal.;

2nd. From a point on the western boundary line of Los Angeles Co., Cal., to a point in T. 7. N., R. 7 E. of San Bernardino base & meridian in said State;

3rd. From the eastern boundary of Arizona to the Colorado River, and

4th. From the western boundary of Texas to the western boundary of New Mexico.

Said maps were received yesterday from C. I. Hillyer, esq., att'y of the Co. in this city.

Very respectfully, your ob't servant,

C. DELANO,
Secretary.

Hon. WILLIS DRUMMOND,
Comr. G. L. O.

(Endorsed:) 177 & 178. U. S. circuit court, south. dist. of California. United States vs. South. Pac. R. R. Co. et al. Exhibit for respondents. Filed March 19th, 1891. Wm. M. Van Dyke, clerk.

741 F. A. W. A. M. J. A. L. E pluribus unum. United States (engraving) of America.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 4, 1891.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of an original letter of record in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

[SEAL.] GEO. CHANDLER,
Acting Secretary of the Interior.

(17902 b–500.) (1–480.)

742 DEPARTMENT OF THE INTERIOR,
Washington, D. C., 9th Mc'h, 1872.

SIR: I have received your letter of yesterday transmitting four maps of the preliminary location of portions of the Atlantic and Pacific Railroad, as follows:

1st. From San Francisco to San Miguel Mission, Cal.

2nd. From a point on the western boundary line of Los Angeles Co., Cal., to a point in T. 7 N., R. 7 E., of San Bernardino base & meridian in said State.

3d. From the eastern boundary of Arizona to the Colorado River; and

4th. From the western boundary of Texas to the western boundary of New Mexico.

Said maps have to-day been transmitted to the Commissioner of the General Land Office for appropriate action.

Very respectfully, your ob't servant,

C. DELANO,
Secretary.

C. J. HILLYER, Esq.,
Att'y A. & Pac. R. R. Co., Washington, D. C.

(Endorsed:) 177 & 178. U. S. circuit court south. dist. of California. United States vs. South. Pac. R. R. Co. et al. Exhibit for respondents. Filed March 19th, 1891. Wm. M. Van Dyke, clerk.

743 [F. A. W. A. M. E pluribus unum. United States (engraving) of America.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 25, 1891.

Pursuant to section 882 of the Revised Statuets, I hereby certify that the annexed paper is a true copy of a letter of record in this Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

GEO. CHANDLER,
Acting Secretary of the Interior.

(17902–b–500.) (1–480.)

744 DEPARTMENT OF THE INTERIOR,
Washington, D. C., 11th April, 1872.

SIR: In answer to the request contained in your letter of the 6th instant, I have to state that the maps filed at different dates by the Atlantic and Pacific Railroad Company, showing the route of the main line of their road through the Indian Territory, northern Texas, New Mexico, Arizona, and portions of California to San Francisco, have been examined and approved; and the lands along the line indicated by the maps will, so far as they are public lands, be withdrawn as soon as the necessary maps therefor can be completed in the General Land Office. The route to San Francisco, as delineated on the map filed, appears to me to be sanctioned by the terms of the charter of the company, and there is no doubt of their right to construct the road on that line.

I am, sir, very respectfully, your ob't servant,

B. R. COWEN,
Act'g Secretary.

FRANCIS B. HAYES, Esq.,
President of the Atlantic & Pacific Railroad Company (Present).

(Endorsed:) Nos. 177 & 178. U. S. circuit court, south. district California. United States vs. Southern Pacific R. R. Co. et als. Exhibit for respondents. Filed April 6th, 1891. Wm. M. Van Dyke, clerk.

745 [F. A. W. A. M. J. A. L. E pluribus unum. United States (engraving) of America.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 27, 1891.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed paper is a true copy of a letter on file in the Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed the day and year first above written.

[SEAL.]

JOHN W. NOBLE,
Secretary of the Interior.

(17902 b–500.) (1–480.)

746 Rec'd 15 Aug., '72.] WASHINGTON, D. C., *August* 15, 1872.

To the honorable the SECRETARY OF THE INTERIOR:

SIR: For and on behalf of the Atlantic and Pacific Railroad Company, I have the honor to file herewith two maps designating the line of its railroad in the county of San Bernardino, State of California, and to the east side of the Colorado River, in Arizona Territory, and the line of its road in the State of California between the San Miguel Mission and the Los Angeles County line.

I have the honor to request an acknowledgment of the receipt of said maps by the Department.

Very respectfully,

W. L. JEFFRIES,
Att'y for A. P. R. R. Co.

(Endorsed:) Ack'd. 16 Aug., '72.

(Endorsed:) Nos. 177 & 178. U. S. circuit court, south. dist. California. United States vs. Southern Pacific R. R. Co. et als. Exhibit for respondents. Filed April 6th, 1891. Wm. M. Van Dyke, clerk.

747 [F. (4–207.) M. N. W. C. E.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 27, 1891.

I, W. M. Stone, Acting Commissioner of the General Land Office, do hereby certify that the annexed copy of letter dated April 16, 1874, from the Secretary of the Interior to the Commissioner of the General Land Office, is a true and literal exemplification of the same as it appears of record in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

W. M. STONE,
Acting Commissioner of General Land Office.

(18236 b–1 m.)

748 DEPARTMENT OF THE INTERIOR,
Washington, D. C., 16 Apl., 1874.

SIR: Referring to my letter to you of yesterday, concerning the route of the Atlantic & Pacific Railroad in California, I transmit herewith two maps designating the line of said railroad in the county of San Bernardino, State of California, and to the east side of the Colorado River, in Arizona Territory; and the line of road in the State of Cal. between the San Miguel Mission and the Los Angeles County line. These maps were received 15 Aug., '72, with letter of that date from N. L. Jeffries, esq., attorney of the company, & are approved by the Department.

Very respectfully, your ob't servant,

C. DELANO,
Secretary.

Hon. WILLIS DRUMMOND,
Com'r G. L. O.

(Endorsed:) Nos. 177 & 178. U. S. circuit court, south. district California. United States vs. Southern Pacific R. R. Co. et als. Exhibit for respondents. Filed April 6th, 1891. Wm. M. Van Dyke, clerk.

749 *Order allowing appeal.*

At a stated term, to wit, the January term, A. D. 1891, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the court room in the city of Los Angeles, on Monday, the 22nd day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Present: The honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA, complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills, and Garrit L. Lansing, trustees, and Joseph E. Youngblood, defendants. } No. 178.

The complainants, the United States of America, having this 22nd day of June, 1891, being a day in the January term, A. D. 1891, of said circuit court, by Joseph H. Call, esq., special assistant United States attorney for the southern district of California, and counsel for complainants, prayed an appeal to the Supreme Court of the United States to reverse the decree heretofore, to wit, on this 22nd day of June, 1891, being a day also in the January term, A. D. 1891, of the said circuit
750 court, filed and entered of record in said circuit, and it appearing to this court that the matter in dispute in said cause, exclusive of costs, exceeds the sum or value of five thousand (5,000) dollars, and that the complainants herein are entitled to the allowance of an appeal operating as a supersedeas, the said complainants having taken the said appeal within the time allowed by law for the supersedeas:

It is ordered that the said complainants be, and the said complainants hereby are, permitted and allowed to prosecute an appeal to the Supreme

Court of the United States from the said final decree filed and entered as aforesaid; and it is hereby ordered that the said appeal operate as a supersedeas in this suit; and it is further ordered that a certified transcript of the pleadings, testimony, exhibits, stipulations, and proceedings be forthwith transmitted to the Supreme Court of the United States.

751 In the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California.

THE UNITED STATES OF AMERICA, complainants,
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY, D. O. Mills, and Garrit L. Lansing, trustees, and Joseph E. Youngblood, defendants.
} No. 178.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States of America of the ninth judicial circuit, in and for the southern district of California, do hereby certify the foregoing seven hundred and fifty (750) pages numbered from 1 to 750, inclusive, and comprised in three (3) volumes, numbered respectively, Vol. 1, Vol. 2, and Vol. 3, including diagrams, diseños, maps, and plats, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled cause; and that the same together constitute the transcript on appeal to the
752 Supreme Court of the United States in said cause.

Attest my hand and the seal of said circuit court this 5th day of September, A. D. 1891.

[SEAL.] WM. M. VAN DYKE,
Clerk of the United States Circuit Court,
for the Southern District of California.

753 UNITED STATES OF AMERICA, *ss:*

To the Southern Pacific Railroad Company, D. O. Mills, and Garrit L. Lansing, trustees, and Joseph E. Youngblood, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the 21st day of August, A. D. 1891, pursuant to an order allowing an appeal from the final decree of the circuit court of the United States, in and for the southern district of California, in the cause wherein the United States of America are appellants and you are appellees, to show cause, if any there be, why the said decree in the said cause mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief-Justice of the United States, this 22nd day of June, A. D. 1891, and of the Independence of the United States the one hundred and fifteenth.

E. M. Ross,
U. S. District Judge and one of the Judges of the Circuit Court.

754 (Indorsed:) In the Supreme Court of the United States. The United States of America vs. The Southern Pacific Railroad Company, et al. Citation.

Due and legal service of the within citation is hereby admitted by the within named appellees and defendants this June 24, 1891.

JOSEPH D. REDDING,
& A. B. HOTCHKISS,
Sol. for Defd'ts.

Filed June 24th, 1891, in case No. 178. Wm. M. Van Dyke, clerk.

755 [E. A.]

In the Supreme Court of the United States, October term, 1891.

THE UNITED STATES
vs.
THE SOUTHERN PACIFIC RAILROAD COMPANY et al. } No. 1374.

Stipulation for printing.

It is hereby agreed by and between the parties hereto that the printed record in the case No. 1302, in this court, shall be taken and accepted by said parties and the court, so far as applicable to this case, as a part of the printed record in this case.

And it is further agreed by and between said parties, that the whole of the certified record in this case shall be printed, save and except the following pages therein: From the middle of page 144 to 164 inclusive.
165 to 304 "
319 to 343 "
357 to 423 "
443 to 464 "
519 to 703 "

Signed and agreed by and between said parties this 29 December, 1891.
For plaintiffs in error.

WM. H. TAFT,
Solicitor-General.

For defendants in error (appellees).

HENRY BEARD,
Attorney.

756 (Indorsed:) Supreme Court U. S. 1891, October term. No. 1374. The United States, appt., vs. The Southern Pacific R. R. Co. et al. Stipulation, that record in No. 1302 be considered as part of record in this case, & as to printing other parts of record.

(Stamp:) Office Supreme Court U. S. Filed Jan. 2, 1892. James H. McKenney, clerk.

(Indorsement on cover:) No. 1374. The United States, appellant, vs. The Southern Pacific Railroad Company. D. O. Mills & Garrit L. Lansing, trustees, and Joseph E. Youngblood. S. California C. C. U. S. Filed September 19, 1891. (14848.)

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